

**Council of the District of Columbia  
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY  
COMMITTEE REPORT**

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SECRETARY

To: Members of the Council of the District of Columbia

From: Councilmember Charles Allen **CA**  
Chairperson, Committee on the Judiciary and Public Safety

Date: September 20, 2018

Subject: Report on B22-0329, the "Trafficking Survivors Relief Amendment Act of 2018"

The Committee on the Judiciary and Public Safety, to which Bill 22-0329, the "Trafficking Survivors Relief Amendment Act of 2018", was referred, reports favorably thereon and recommends approval by the Council of the District of Columbia.<sup>1</sup>

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<sup>1</sup> The short title of the bill has been updated to reflect the current year.

## **STATEMENT OF PURPOSE AND EFFECT**

### **I. Purpose and Effect**

Bill 22-0329, the “Trafficking Survivors Relief Amendment Act of 2018”, was introduced on June 20, 2017, by Councilmember Mary Cheh and Committee Chairperson Charles Allen. Councilmembers Jack Evans, Vincent Gray, David Grosso, Kenyan McDuffie, Brianne Nadeau, Elissa Silverman, and Robert White co-sponsored the bill. B22-0329 was referred to this Committee on June 20, 2017, with comments from the Committee on Transportation and the Environment, and the Committee held a public hearing on the bill on September 21, 2017.

Human trafficking victims<sup>2</sup> are often coerced into criminal activity by their traffickers. Although victims are most commonly forced to commit prostitution and related offenses like solicitation, loitering, and lewdness, they may also be compelled to commit theft, drug-related offenses, and, sometimes, violent offenses. When arrested for these offenses, law enforcement agencies and prosecutors may fail to recognize that the victim was acting under duress during the commission of the offense. Rather than divert these victims from the criminal justice system to service providers that can address the effects of their victimization, victims are instead often met with the traditional tools of law enforcement: arrest and prosecution. When victims ultimately begin the difficult work of re-entering society, they then face significant barriers to maintaining stable employment, housing, and education due to their criminal records.

In passing the Committee Print, the District would join more than thirty states that permit human trafficking victims to seal their records, either through the legal avenues of record sealing, expungement, or vacatur. “Sealing” is the removal of records from publicly available sources. Sealed records may, nevertheless, be accessed by an interested party that can demonstrate a legitimate need for access to the records, such as law enforcement. “Expungement” can mean the complete physical destruction of a criminal record or the alteration or redaction of criminal records to remove information that identifies a specific individual. “Vacatur” refers to the process whereby a judge overturns a conviction and dismisses the underlying charge – restoring the individual to the legal status they occupied before they were ever even charged with the crime. Vacatur is the most robust type of criminal record sealing.

B22-0329 would specifically establish two new forms of relief for victims of human trafficking: the vacatur of convictions and the expungement of criminal records that did not result in a conviction. To qualify for the vacatur or expungement established by B22-0329, the moving party (“movant”) must demonstrate that the conduct underlying the criminal records or conviction was the direct result of the movant having been a victim of trafficking. While there are record sealing laws of general applicability in the District, none specifically address the unique situation of human trafficking victims. Furthermore, expungement and vacatur are more robust forms of relief than simply sealing these records from public view.

At the same time, the Committee recognizes the need to discern between arrests and convictions for uncoerced, culpable conduct from those where the victim was acting under duress.

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<sup>2</sup> The Committee Print uses the terms “victim” and “survivor” interchangeably, although individuals who have lived experience of trafficking may identify with one or both or neither.

The Committee Print accomplishes this by creating an adversarial process for movants seeking vacatur or expungement. Movants must prove by clear and convincing evidence that they are a victim of human trafficking, and that the conduct underlying their criminal records or convictions was “the direct result of the individual being a victim of human trafficking.” Prosecutors may respond to and oppose a movant’s motion for relief. A judge from the Superior Court of the District of Columbia will ultimately make an individualized determination as to whether a movant has met their burden and is, therefore, entitled to relief. Finally, the Committee Print excludes from relief certain criminal offenses so serious in nature that the conduct should not be excused – even if the perpetrator was a victim of human trafficking. It is important to note that all movants applying for vacatur of convictions would have already served their sentences.

## **II. Background**

### *a. Criminal Records and Collateral Consequences*

An individual’s contact with the justice system is accompanied by countless publicly available documents, including records of arrest, formal charging decisions, and the final disposition of cases. In the District, documents that accompany a criminal case are generally accessible to the public.<sup>3</sup> These records remain available long after the disposition of the case or, if the individual was convicted, after the successful completion of the sentence. Sources estimate that there are approximately seventy million Americans with a criminal record – one third of the adult population.<sup>4</sup>

When a defendant is convicted of a crime – after a trial or by plea – a court can impose a sentence on that individual. The individual can be ordered to complete community service, pay a fine, abide by the terms and conditions of probation or community supervision, or serve a period of incarceration. A court may also place restrictions on where offenders can live or with whom they associate. The Committee Report refers to these judge-imposed penalties as a formal sentence.

There are, however, myriad other barriers to housing, employment, education, and public assistance that individuals experience because of their criminal record.<sup>5</sup> These barriers, called “collateral consequences”, are imposed not by the penal law, but “by ancillary rules, statutes, or

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<sup>3</sup> For a description of which D.C. Superior Court records are available electronically, see D.C. Superior Court, *eAccess User Guide*, available at <https://www.dccourts.gov/sites/default/files/eAccess-User-Guide-Updated.pdf>. Neither sealed nor confidential records are accessible via the eAccess platform. See D.C. Superior Court, *Frequently Asked Questions* (last visited May 17, 2018), available at <https://www.dccourts.gov/sites/default/files/eaccess/eAccess-FAQs.pdf>. In addition to electronic access, public records are available on site. See *id.*

<sup>4</sup> See Gary Fields & John Emshwiller, Wall Street Journal, *As Arrest Records Rise, Americans Find Consequences Can Last a Lifetime* (August 18, 2014), available at <https://www.wsj.com/articles/as-arrest-records-rise-americans-find-consequences-can-last-a-lifetime-1408415402>; Kathy Gurchiek, Society for Human Resource Management, *Research: Employers Willing to Overlook a Criminal Record to Hire the Right Person* (May 17, 2018), available at <https://www.shrm.org/ResourcesAndTools/hr-topics/behavioral-competencies/global-and-cultural-effectiveness/Pages/Research-Employers-Willing-to-Overlook-Criminal-Record-to-Hire-Right-Person.aspx>.

<sup>5</sup> For a comprehensive listing of collateral consequences nationwide, see Justice Center, The Council of State Governments, *National Inventory of Collateral Consequences of Conviction* (last visited May 17, 2018), available at <https://niccc.csgjusticecenter.org/map/>.

practices that make it much harder to obtain a job, housing, or other necessities.”<sup>6</sup> Collateral consequences can limit the exercise of otherwise constitutionally protected rights. Individuals convicted of a felony are, for example, banned from owning firearms<sup>7</sup> or subject to occupational licensing restrictions, as discussed below.

Regarding employment opportunities, collateral consequences can take two general forms. The first are legal prohibitions on certain types of employment for individuals with convictions for particular offenses. In the District, for example, applicants for occupational licenses cannot have been “convicted of an offense which bears directly on the fitness of the person to be licensed.”<sup>8</sup> Even if a candidate is not legally disqualified from employment on the basis of a conviction, many employers conduct background checks on candidates with the intention of avoiding legal liability for negligent hiring decisions, maintaining a safe workplace, preventing theft or embezzlement, and determining the overall trustworthiness of a potential employee.<sup>9</sup> Consequently, and although the District has “banned the box” in employment,<sup>10</sup> records of arrests or formal charging decisions – even those that did not result in conviction – can still serve as the basis for some adverse hiring decisions:

The fact of an arrest does not establish that criminal conduct has occurred, and an exclusion based on an arrest, in itself, is not job related and consistent with business necessity. However, an employer may make an employment decision based on the conduct underlying an arrest if the conduct makes the individual unfit for the position in question.<sup>11</sup>

In addition to these economic consequences, criminal records can have deleterious effects on an individual’s sense of dignity and self-worth. Ms. Amaya, a public witness, testified at the Committee’s public hearing on the bill about the stigmatizing effects of criminal convictions:

Carrying criminal convictions affected multiple areas of my life. And I think even if those records didn’t affect applications for education, banking or housing . . . they affected me – the stigma of having a criminal record and being known as a criminal even though I was the victim... Trying to live my life as a productive citizen with multiple criminal records hanging over my head seemed almost impossible.”<sup>12</sup>

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<sup>6</sup> Washington Lawyers’ Committee for Civil Rights & Urban Affairs, *The Collateral Consequences of Arrests and Convictions under D.C., Maryland, and Virginia Law* (October 22, 2014) at 1 (quoting Council for Court Excellence, *Unlocking Employment Opportunity for Previously Incarcerated Persons in the District of Columbia* at 5 (2011)).

<sup>7</sup> See D.C. Official Code § 22-4503. See also 18 U.S.C. 922(g)(1) for the federal counterpart.

<sup>8</sup> D.C. Official Code § 47-2853.12.

<sup>9</sup> See Society for Human Resource management, *SHRM Survey Findings: Background Checking—The Use of Criminal Background Checks in Hiring Decisions* at 6 (July 19, 2012), available at [https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Documents/2012BackgroundCheck\\_Criminal\\_FINAL.pptx](https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/Documents/2012BackgroundCheck_Criminal_FINAL.pptx).

<sup>10</sup> See Fair Criminal Record Screening Amendment Act of 2014, effective December 17, 2014 (D.C. Law 20-152; D.C. Official Code § 32-1341 *et seq.*).

<sup>11</sup> U.S. Equal Employment Opportunity Commission, *EEOC Enforcement Guidance Number 915.002* (April 25, 2012), available at [https://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm).

<sup>12</sup> *Committee on the Judiciary & Public Safety Public Hearing on Bill 22-0329, the “Trafficking Survivors Relief Amendment Act of 2017”* (oral testimony of Barbara Amaya, Public Witness), available at [http://dc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=4108](http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4108).



Many jurisdictions have recognized the substantial social costs of criminal records and, in response, have enacted laws to restrict public access to or eliminate those records. The Committee Report refers to this body of laws as “record sealing laws.” Record sealing laws can be roughly divided into three categories, as mentioned briefly above: sealing, expungement, and vacatur. Sealing, the least robust form of relief, is the removal of records from publicly available sources. Sealed records are, however, still available if an interested party can demonstrate a legitimate need for access to the documents. In contrast, expungement refers to the destruction or alteration of criminal records or the removal of information that identifies a specific individual. Vacatur, the most robust form of relief, nullifies a conviction and is intended to restore an individual to the status they occupied prior to their arrest or conviction.

b. *The Coercive Nature of Human Trafficking*

*Through educating our law enforcement officers, prosecutors, and judges, we have begun to recognize that the old model of prosecuting human trafficking cases – that is, treating victims as criminal defendants in order to leverage them into forced cooperation against their traffickers – is ineffective, unproductive, and misunderstands the coercive nature of the victimization that occurs in human trafficking.<sup>13</sup>*

Human trafficking is the “organized criminal activity in which human beings are treated as possessions to be controlled and exploited (as by being forced into prostitution or involuntary labor).”<sup>14</sup> It was estimated that on any given day in 2016, approximately twenty-five million people worldwide were forced to work under threat or coercion.<sup>15</sup> During the Committee’s hearing, Andrea Powell, Founder of FAIR Girls, summarized the prevalence of human trafficking in the District:

Washington, D.C. has a particularly acute human trafficking issue. It is estimated that roughly 500 individuals seek services due to their victimization just of sex trafficking each year. The FBI identifies D.C. as one of the top 14 cities in the United States where commercial sexual exploitation takes place. The National Human Trafficking Resource Center notes that because of D.C.’s location along major highways and thoroughfares, and Baltimore’s proximity, D.C. has a significant part of the East Coast’s sex trafficking circuits. NHRTC also states that phone calls placed for help were made at a rate that was sixteenth highest in the nation, despite the population of D.C. being far lower than the average U.S. state.<sup>16</sup>

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<sup>13</sup> *Committee on the Judiciary & Public Safety Public Hearing on Bill 22-0329, the “Trafficking Survivors Relief Amendment Act of 2017”* (written testimony of Erin Andrews, Director of Policy, FAIR Girls), available at <http://lms.dccouncil.us/Download/38336/B22-0329-HearingRecord1.pdf>.

<sup>14</sup> *Human Trafficking*, Merriam-Webster (May 15, 2018), available at <https://www.merriam-webster.com/dictionary/human%20trafficking>.

<sup>15</sup> International Labor Organization & Walk Free Foundation, *Global estimates of modern slavery: forced labour and forced marriage at 9* (2017), available at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms\\_575479.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/wcms_575479.pdf).

<sup>16</sup> *Committee on the Judiciary & Public Safety Public Hearing on Bill 22-0329, the “Trafficking Survivors Relief Amendment Act of 2017”* (oral testimony of Andrea Powell, Founder, FAIR Girls), available at [http://dc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=4108](http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4108).

Traffickers use force and the threat of force to control their victims. Traffickers will isolate victims from their support networks to make the victim more dependent on the trafficker.<sup>17</sup> Traffickers also often demand that their victims perform or coerce them into performing criminal acts. In the context of sex trafficking, this most often takes the form of the offense of prostitution<sup>18</sup> and related offenses such as loitering and solicitation:

The vast majority of the crimes we see our clients being forced to commit are low level misdemeanors. Of these misdemeanors, the majority of them are prostitution or prostitution-related offenses. A typical situation involves a trafficker posting online commercial sexual advertisements for one of his victims against her will and then using the threats of bodily harm to coerce her into the selling of sex for money. The victim is then arrested for prostitution through a law enforcement investigation.<sup>19</sup>

But traffickers frequently compel their victims to engage in a variety of other criminal behavior. For example, traffickers may encourage their victims to provide false statements to law enforcement in order to evade capture.<sup>20</sup> Or they may force their victims to transport drugs or other contraband to shield the trafficker from criminal liability. As put by Ms. Andrews, a former prosecutor who handled human trafficking cases for the United States Attorney's Office for the District of Columbia:

I personally have seen traffickers force victims to take drugs, sell drugs, give drugs to minor victims that they're working beside. I have seen them have to steal from the people they were sold to. I have seen them have to drive under the influence and without a license because their identification was taken by their trafficker... I've seen traffickers stash firearms underneath the victim to ensure that he didn't

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<sup>17</sup> *Committee on the Judiciary & Public Safety Public Hearing* on Bill 22-0329, the "Trafficking Survivors Relief Amendment Act of 2017" (written testimony of Toni McIntosh Harper, Vice President of Programs, The Federal City Alumnae Chapter, Delta Sigma Theta Sorority, Inc.), available at <http://lims.dccouncil.us/Download/38336/B22-0329-HearingRecord1.pdf> ("They are sometimes, although not always, transported away from their homes and families, forced to rely on their captors for food and 'security,' and threatened with physical harm if caught.").

<sup>18</sup> The Committee uses the term "prostitution" to refer to the criminal offense. Under D.C. Code § 22-2701.01(3), "prostitution" means "a sexual act or contact with another person in return for giving or receiving anything of value."

<sup>19</sup> *Committee on the Judiciary & Public Safety Public Hearing* on Bill 22-0329, the "Trafficking Survivors Relief Amendment Act of 2017" (oral testimony of Stacey Reimer, Executive Director, Amara Legal Services), available at [http://dc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=4108](http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4108).

<sup>20</sup> *Committee on the Judiciary & Public Safety Public Hearing* on Bill 22-0329, the "Trafficking Survivors Relief Amendment Act of 2017" (written testimony of Toni McIntosh Harper, Vice President of Programs, The Federal City Alumnae Chapter, Delta Sigma Theta Sorority, Inc.), available at <http://lims.dccouncil.us/Download/38336/B22-0329-HearingRecord1.pdf> ("[Victims] are taught to lie to law enforcement authorities to protect their captor at their own peril. Making matters worse, a trafficked person whose only encounters with law enforcement are often under the trauma of an arrest, mak[es] it less likely for that individual to trust law enforcement authorities.").

have direct criminal exposure for that firearm, and also to use it as a coercive tool against the victim.<sup>21</sup>

In some cases, trafficking victims may even be coerced into becoming “bottom girls” – women who collaborate with their trafficker to help traffic other individuals:

However, we cannot ignore that victims are also forced to commit crimes that are more serious. These crimes range from drug offenses and firearm offenses to even the crime of human trafficking itself. The phrase “bottom girl” is used to refer to a victim of human trafficking who is forced by her trafficker to control and coerce his other victims...Often, bottom girls have been trafficked for many years, beginning when they were teenagers. The bottom girls – and other victims – then become saddled with criminal records. As a result, they are prevented from obtaining employment, housing, education, and other necessities.<sup>22</sup>

In theory, victims that committed crimes because they were forced to by their trafficker could claim that they were acting under duress and are, therefore, excused from criminal liability.<sup>23</sup> Ms. Amaya, a trafficking survivor who testified at the Committee’s hearing, endorsed a similar position, stating that “Anyone who has been forced, tricked, or coerced into criminal activity should not be considered as having consented to that activity . . . and therefore should not be considered a criminal.”<sup>24</sup> In practice, however, survivors rarely avail themselves of the duress defense. That reluctance is, in part, due to survivors’ fear of retaliation by their traffickers:

The purpose of vacatur is recognizing that survivors are often forced to commit many crimes, even violent crimes, under extreme duress. In our experience, survivors do not assert a duress defense during their trials, because doing so would mean risking their safety by testifying against their trafficker.<sup>25</sup>

A survivor’s reluctance to use the duress defense may also stem from the fact that survivors may not identify themselves as a victim until long after their trafficking experience. As stated by Ms. Powell during the public hearing, “[f]ear of coercion, threats of violence, trauma-bonds, and the psychological torment of human trafficking survivors means it often takes years to self-identify

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<sup>21</sup> *Committee on the Judiciary & Public Safety Public Hearing* on Bill 22-0329, the “Trafficking Survivors Relief Amendment Act of 2017” (oral testimony of Erin Andrews, Director of Policy, FAIR Girls), available at [http://dc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=4108](http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4108).

<sup>22</sup> *Committee on the Judiciary & Public Safety Public Hearing* on Bill 22-0329, the “Trafficking Survivors Relief Amendment Act of 2017” (oral testimony of Stacey Reimer, Executive Director, Amara Legal Services), available at [http://dc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=4108](http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4108).

<sup>23</sup> See *McClam v United States*, 775 A.2d 1100 (“A duress instruction is appropriate if the evidence is sufficient for a reasonable jury to find that the defendant participated in the offense as the result of a reasonable belief that he would suffer immediate serious bodily injury or death if he did not participate in the crime.”).

<sup>24</sup> *Committee on the Judiciary & Public Safety Public Hearing* on Bill 22-0329, the “Trafficking Survivors Relief Amendment Act of 2017” (oral testimony of Barbara Amaya, Public Witness), available at <http://lims.dccouncil.us/Download/38336/B22-0329-HearingRecord1.pdf>.

<sup>25</sup> *Committee on the Judiciary & Public Safety Public Hearing* on Bill 22-0329, the “Trafficking Survivors Relief Amendment Act of 2017” (written testimony of Stacey Reimer, Executive Director, Amara Legal Services), available at <http://lims.dccouncil.us/Download/38336/B22-0329-HearingRecord1.pdf>.

– years of care, counseling, recovery, and safety.”<sup>26</sup> Victims are, therefore, saddled with shame and the stigma of arrest and conviction records for conduct into which they were forced by their trafficker. Of the women served by FAIR Girls “in 2015 and 2016, approximately half of the young women...served had experienced one arrest or conviction prior to getting the help they need to survive.”<sup>27</sup>

*c. Approaches in Other Jurisdictions*

As legislatures’ understanding of human trafficking has evolved, thirty-two states have created laws allowing victims of human trafficking to seal, expunge, or vacate criminal records; twenty-five states provide for the vacatur of convictions, three states offer expungements, and four allow the criminal records to be sealed. There is also pending in the U.S. Senate a federal bill that would permit vacatur of convictions and expungement of arrest records for victims of human trafficking, on which the Committee Print is modeled.<sup>28</sup>

States are split on which offenses are eligible for relief under their record sealing laws for survivors. Only the offense of prostitution is eligible for relief in North Carolina.<sup>29</sup> California, in contrast, allows for the vacatur of any nonviolent offense including prostitution.<sup>30</sup> Connecticut goes even further, and allows for the vacatur of any judgement of conviction, provided that the conduct resulted from the individual being a trafficking victim. A table summarizing the record sealing laws in other jurisdictions can be found below:

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<sup>26</sup> *Committee on the Judiciary & Public Safety Public Hearing* on Bill 22-0329, the “Trafficking Survivors Relief Amendment Act of 2017” (oral testimony of Andrea Powell, Founder, FAIR Girls), available at [http://dc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=4108](http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4108).

<sup>27</sup> *Committee on the Judiciary & Public Safety Public Hearing* on Bill 22-0329, the “Trafficking Survivors Relief Amendment Act of 2017” (oral testimony of Andrea Powell, Founder, FAIR Girls), available at [http://dc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=4108](http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4108).

<sup>28</sup> S. 104, 115<sup>th</sup> Cong., available at <https://www.congress.gov/bills/115th-congress/senate-bill/104>.

<sup>29</sup> See N.C. Gen. Stat. § 15A-1415(b)(10); N.C. Gen. Stat. § 15A-1416.1

<sup>30</sup> Cal. Pen. Code § 236.14

**Table 1: State Record Sealing Laws for Trafficking Victims**

<i>State</i>	<i>Statute or Source of Law</i>	<i>Form of Relief</i>	<i>Eligible Offenses</i>	<i>Scope of Eligibility</i>
<b>Alabama</b> <sup>31</sup>	None	N/A	N/A	N/A
<b>Alaska</b> <sup>32</sup>	None	N/A	N/A	N/A
<b>Arizona</b> <sup>33</sup>	A.R.S. § 13-907; Ariz. R. Crim. P. 29.1	"If a court grants an application submitted by a sex trafficking victim, all paper and electronic records of the vacated conviction become confidential."	A "conviction under A.R.S. § 13-3214, or a conviction under a city or town ordinance that has the same or substantially similar elements."	Requires showing that "the applicant's participation in the offense was the direct result of having been a victim of sex trafficking pursuant to A.R.S. § 13-1307
<b>Arkansas</b>	A.C.A. § 16-90-1412	Sealing the conviction	Prostitution	Conviction was "a result of the person's having been a victim of human trafficking."
<b>California</b>	Cal. Pen. Code § 236.14	Vacatur of the conviction and expungement of the arrest	Any nonviolent offense, including prostitution	"The commission of the crime was a direct result of being a victim of human trafficking."
<b>Colorado</b>	C.R.S. 24-72-706	Sealing of conviction records	Prostitution, soliciting for prostitution, keeping a place of prostitution, public indecency, or any corresponding municipal code or ordinance	"The defendant establishes . . . that, at the time he or she committed the offense, he or she had been trafficked by another person . . . for the purpose of performing the offense."
<b>Connecticut</b>	Sec. 54-95c	"[V]acate any judgment of conviction"	"Any judgment of conviction"	"[P]articipation in the offense was a result of having been a victim of conduct of another person that constitutes (1) trafficking in persons under section 53a-192a, or (2) a criminal violation of 18 USC Chapter 77, as amended from time to time."
<b>Delaware</b>	11 Del. C. § 787(j)	Pardon, expungement of conviction	"[P]rostitution, loitering or obscenity committed as a direct result of being a victim of human trafficking"	"[P]rostitution, loitering or obscenity committed as a direct result of being a victim of human trafficking"
<b>Florida</b>	Fla. Stat. § 943.0583	"[E]xpunge the criminal history record" but later states "A conviction	All offenses except serious felonies. <i>See</i> Fla. Stat. § 775.084(1)(b)1.	"[O]ffense was committed or reported to have been committed as a part of the human trafficking

<sup>31</sup> Alabama does not have a record sealing law specifically for trafficking survivors, but it has established an affirmative defense. *See* Code of Ala. § 13A-6-159. The state also provides for the sealing of juvenile records (*see* Code of Ala. § 12-15-136) and for expungement of non-felony convictions (*see* Code of Ala. § 15-27-1).

<sup>32</sup> Alaska has a record sealing law of general applicability that is not specifically for trafficking survivors. *See* AS § 12.62.180.

<sup>33</sup> Arizona does not have a record sealing law specifically for trafficking survivors. It does, however, have a record sealing law for juveniles. *See* A.R.S. § 13-921.

<i>State</i>	<i>Statute or Source of Law</i>	<i>Form of Relief</i>	<i>Eligible Offenses</i>	<i>Scope of Eligibility</i>
		expunged under this section is deemed to have been vacated due to a substantive defect in the underlying criminal proceedings.”		scheme of which the person was a victim or at the direction of an operator of the scheme”
<b>Georgia</b>	None	None	None	None
			<p>“[C]ommitting the offense of prostitution under section 712-1200, loitering for the purpose of engaging in or advancing prostitution under section 712-1206, street solicitation of prostitution in designated areas under section 712-1207, or convicted of a lesser offense when originally charged with a violation of section 712-1200, 712-1206, or 712-1207”</p> <p>Does not cover offenses of  “(a) Sex trafficking under section 712-1202;  (b) Promoting prostitution under section 712-1203; or  (c) A person who pays, agrees to pay or offers a fee to another person to engage in sexual conduct.”</p>	<p>“[D]efendant’s participation in the offense was the result of the person having been a victim of:  (a) Sex trafficking under section 712-1202 or promoting prostitution under section 712-1203; or (b) A severe form of trafficking in persons as defined in title 22 United States Code section 7102(9)(A).”</p>
<b>Hawaii</b>	§ 712-1209.6.	Vacate the conviction		
		“[T]he court shall vacate the conviction, if any, and order that the criminal history records taken in connection with the arrest, prosecution and conviction be expunged.”		
<b>Idaho</b>	Idaho Code § 67-3014		Prostitution, “or any other offense determined by the court to be appropriate.”	“[C]ommitted during a period of time when the person was a victim of human trafficking and that was the result of acts required by the human trafficker”
	725 ILCS 5/116-2.1 (not yet codified)	“[V]acate the conviction”	Misdemeanor prostitution, felony prostitution (first offense), and “similar local ordinance[s]”	“[T]he violation was a result of the defendant having been a victim of human trafficking.”
<b>Illinois</b>				
	2017 Ind. HEA 1218 (not yet codified)	“[E]ntitled to have the person’s conviction vacated”	“[C]ommitted an offense that did not result in bodily injury to another person”	The victim of human trafficking was “at the time the person committed the offense, the person was: (A) coerced; or (B) under the control of another person.
<b>Indiana</b>				
<b>Iowa</b>	None	N/A	N/A	N/A

<i>State</i>	<i>Statute or Source of Law</i>	<i>Form of Relief</i>	<i>Eligible Offenses</i>	<i>Scope of Eligibility</i>
<b>Kansas</b>	K.S.A. § 38-2312	"...[T]he records or files concerned shall be treated as if it never occurred, except that upon conviction of a crime or adjudication in a subsequent action under this code the offense may be considered in determining the sentence to be imposed."	"[I]ncluding, but not limited to, acts which, if committed by an adult, would constitute" public disorderly conduct or selling sexual relations.	"[T]he juvenile is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child, the adjudication concerned acts committed by the juvenile as a result of such victimization"
<b>Kentucky</b>	KRS § 529.160	"For the purposes of expungement under KRS 431.076, a finding by the court that the person's participation in the offense was a direct result of being a victim of human trafficking shall deem the charges as dismissed with prejudice."	Prostitution; promoting prostitution; permitting prostitution; loitering for prostitution purposes; human trafficking; promoting human trafficking.	"[P]erson's participation in the offense is determined to be the direct result of being a victim of human trafficking, the person may make a motion in the court in which the charges were filed to expunge all records of the offense."
<b>Louisiana</b>	La. Ch.C. Art. 923	"Expungement and sealing of the record and report of the juvenile proceedings "... all records and files related to the child's arrest, citation, investigation, charge, delinquency proceedings, adjudication, and probation for the offense."	Child's participation in the offense was a result of having been a victim of human trafficking under R.S. 14:46.2 or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. 7101 <i>et seq.</i> ).	Juvenile offenses of prostitution, prostitution by massage, or crime against nature by solicitation.
<b>Maine</b>	None	None	None	None
<b>Maryland</b>	Md. Criminal Procedure Code Ann. § 8-302	"[T]he court may vacate the conviction, modify the sentence, or grant a new trial."	A person convicted of prostitution under § 11-306 of the Criminal Law Article	"[W]hen the person committed the act or acts of prostitution, the person was acting under duress caused by an act of another committed in violation of the prohibition against human trafficking under § 11-303 of the Criminal Law Article or under federal law."
<b>Massachusetts<sup>34</sup></b>	None	None	None	None

<sup>34</sup> Massachusetts has a record sealing law of general applicability that is not specifically for trafficking survivors. See ALM GL ch. 276, § 100A.



<i>State</i>	<i>Statute or Source of Law</i>	<i>Form of Relief</i>	<i>Eligible Offenses</i>	<i>Scope of Eligibility</i>
<b>Michigan</b>	MCLS § 780.621	“[E]nter an order setting aside the conviction.”	Convictions of: Soliciting, accosting, or inviting to commit prostitution or immoral act; Admitting to place for purpose of prostitution; Engaging services for purpose of prostitution, lewdness, or assignation; engaging services with person less than 18 years of age for purpose of prostitution, lewdness, or assignation; or substantially similar local ordinances	“[I]f he or she committed the offense as a direct result of his or her being a victim of a human trafficking violation.”
<b>Minnesota<sup>35</sup></b>	None	N/A	N/A	N/A
<b>Mississippi</b>	Miss. Code Ann. § 97-3-54.6	“Vacate the conviction.”	Human trafficking; procuring involuntary servitude; procuring sexual servitude of a minor; destruction, concealment, or confiscation of passport or other immigration document for purpose of preventing person's freedom of movement or ability to travel; aiding, abetting, or conspiring to violate human trafficking provisions	“[T]he defendant's participation in the offense was the result of being a victim”
<b>Missouri<sup>36</sup></b>	None	N/A	N/A	N/A
<b>Montana</b>	46-18-608, MCA	“[V]acate a person’s conviction”	“[P]rostitution, promoting prostitution, or another nonviolent offense”	“[T]he person’s participation in the offense was a direct result of having been a victim of human trafficking or of sex trafficking under the federal Trafficking Victims Protection Act, 22 U.S.C. 7103 through 7112.”
<b>Nebraska</b>	None	N/A	N/A	N/A
<b>Nevada</b>	NRS 176.515(5)	“[V]acate a judgement”	Prostitution, solicitation for prostitution, unlawful trespass, loitering, loitering for the purposes of prostitution	“The participation of the defendant in the offense was the result of the defendant having been a victim of...

<sup>35</sup> Minnesota has a record sealing law of general applicability that is not specifically for trafficking survivors. See Minn. Stat. § 609A.02.

<sup>36</sup> While Missouri does not have a law specifically for trafficking survivors, expungements are generally available for misdemeanor and felony convictions after a specific waiting period. See § 610.140 R.S.Mo.

<i>State</i>	<i>Statute or Source of Law</i>	<i>Form of Relief</i>	<i>Eligible Offenses</i>	<i>Scope of Eligibility</i>
				(1) trafficking in persons... or (2) Involuntary servitude..."
<b>New Hampshire</b>	RSA 633:7	"[V]acate the conviction"	Indecent exposure; lewdness; prostitution and prostitution-related offenses	"[C]onduct committed as a direct result of being a victim of human trafficking"
<b>New Jersey</b>	N.J. Stat. § 2C:44-1.1	Vacatur and expungement	Prostitution and related offenses; Loitering for the purpose of engaging in prostitution; similar local ordinances	"[T]he person's participation in the offense was a result of having been a victim of human trafficking pursuant to section 1 of P.L.2005, c.77 (C.2C:13-8) or as defined in paragraph (14) of 22 U.S.C. § 7102."
<b>New Mexico</b>	None	N/A	N/A	N/A
<b>New York</b>	NY CLS CPL § 440.10	Vacate judgment	Loitering for the purpose of engaging in a prostitution offense; prostitution; prostitution in a school zone	"[T]he defendant's participation in the offense was a result of having been a victim of sex trafficking under section 230.34 of the penal law, labor trafficking under section 135.35 of the penal law, aggravated labor trafficking under section 135.37 of the penal law, compelling prostitution under section 230.33 of the penal law, or trafficking in persons under the Trafficking Victims Protection Act (United States Code, title 22, chapter 78)"
<b>North Carolina</b>	N.C. Gen. Stat. § 15A- 1415(b)(10); N.C. Gen. Stat. § 15A-1416.1	"Vacate the conviction"	Prostitution	"[T]he violation was a result of the defendant having been a victim of human trafficking or sexual servitude."
<b>North Dakota</b>	N.D. Cent. Code, § 12.1- 41-14	Vacate the conviction and expunge the record of conviction	Prostitution; misdemeanor forgery; misdemeanor theft offenses; insufficient funds or credit offenses; manufacture or possession of a controlled or counterfeit substances offenses; drug paraphernalia offenses	Offense was "as committed as a direct result of being a victim"
<b>Ohio</b>	ORC Ann. 2953.38	Expungement	Soliciting; loitering to engage in solicitation; prostitution	"[T]he person's participation in the offense was a result of the person having been a victim of human trafficking"

<i>State</i>	<i>Statute or Source of Law</i>	<i>Form of Relief</i>	<i>Eligible Offenses</i>	<i>Scope of Eligibility</i>
<b>Oklahoma</b>	22 Okl. St. § 19c	"[E]xpungement of law enforcement and court records relating to a charge or conviction." Records expunged pursuant to this section shall be sealed to the public but not to law enforcement agencies for law enforcement purposes.	"[P]rostitution-related offense"	"[C]ommitted as a result of the defendant having been a victim of human trafficking."
<b>Oregon</b>	None	N/A	N/A	N/A
<b>Pennsylvania</b>	None	N/A	N/A	N/A
<b>Rhode Island</b>	R.I. Gen. Laws § 11-67.1-17	"[V]acate the conviction and seal or expunge the record of conviction"	Prostitution; Solicitation to Commit a Sexual Act	Offense was "committed as a direct result of being a victim."
<b>South Carolina</b>	None	N/A	N/A	N/A
<b>South Dakota</b>	None	N/A	N/A	N/A
<b>Tennessee</b>	None	N/A	N/A	N/A
<b>Texas</b>	None	N/A	N/A	N/A
<b>Utah</b>	Utah Code Ann. § 78B-9-104	"[A] person who has been convicted and sentenced for a criminal offense may file an action in the district court of original jurisdiction for post-conviction relief to vacate or modify the conviction or sentence upon the following grounds"	Possession of a controlled substance; aiding prostitution; criminal trespass; theft; possession of forged writing or device for writing; retail theft; unlawful possession of another's identification document; lewdness; prostitution; sexual solicitation	"[T]he petitioner committed any of the following offenses while subject to force, fraud, or coercion, as defined in Section 76-5-308," which includes possession of a controlled substance, aiding prostitution, criminal trespass, theft, possession of forged writing or device for writing, retail theft, unlawful possession of another's identification document, lewdness, prostitution, or sexual solicitation.
<b>Vermont</b>	13 V.S.A. § 2658	Vacate the conviction	Prostitution	"[I]f [the conviction] was obtained as a result of the person having been a victim of human trafficking
<b>Virginia</b>	None	N/A	N/A	N/A
<b>Washington</b>	Rev. Code Wash. (ARCW) § 9.96.060	"[M]ay apply to the sentencing court for vacation of the applicant's record of conviction for the prostitution offense."	Prostitution	The individual committed the offense as a result of being a victim of trafficking, promoting prostitution in the first degree, promoting commercial sexual abuse of a minor, or trafficking in persons
<b>West Virginia</b>	W. Va. Code § 61-14-9	"[V]acate the conviction and expunge	Prostitution	"[T]he individual's participation in the offense

<i>State</i>	<i>Statute or Source of Law</i>	<i>Form of Relief</i>	<i>Eligible Offenses</i>	<i>Scope of Eligibility</i>
		the record of conviction.”		was a direct result of being a victim of trafficking.”
<b>Wisconsin</b>	None	N/A	N/A	N/A
<b>Wyoming</b>	Wyo. Stat. § 6-2-708	“[M]ay vacate the conviction”	“[A]ny commercial sex act or other criminal acts committed as a direct result of, or incident to, being a victim of human trafficking in violation of W.S. 6-2-702 through 6-2-707.”	“[D]efendant’s participation in the offense is found to have been the result of having been a victim”

d. *Record Sealing Laws in the District of Columbia*

The District does not have any record sealing laws specifically for human trafficking survivors. There are, however, record sealing laws that cover a variety of other offenses, but they are extremely limited in their applicability and do not extend to expungement or vacatur. They include record sealing following juvenile delinquency proceedings, sealing on the grounds of actual innocence, and sealing of eligible offenses after a statutory waiting period. The forms of record sealing currently permitted in the District is discussed in more detail below.

The District, like many jurisdictions, allows individuals to seal records related to juvenile delinquency proceedings.<sup>37</sup> Juvenile case records “shall be kept confidential and shall not be open to inspection, nor shall information from records inspected be divulged to unauthorized persons.”<sup>38</sup> Juveniles may also move to seal a record on the grounds of actual innocence.<sup>39</sup> The movant must establish that “[t]he violation for which the person was arrested or petitioned did not occur” or that “[t]he movant did not commit the offense.”<sup>40</sup>

Adults in the District may move to have criminal records sealed on the grounds of actual innocence, provided their criminal case was terminated without a conviction.<sup>41</sup> The movant has the burden of proving that either the offense for which the person was arrested did not occur or that the movant did not commit the offense.<sup>42</sup> There are two standards of proof. If the motion is filed within four years after the prosecution has been terminated, the movant must meet their burden by a preponderance of the evidence.<sup>43</sup> If the motion is filed more than four years after the prosecution has terminated, the movant must satisfy their burden by clear and convincing evidence.<sup>44</sup>

<sup>37</sup> D.C. Code § 16-2335 (Family Division “shall vacate its order and findings and shall order the sealing of the case and social records referred to in sections 16-2331 and 16-2332 and the law enforcement records and files referred to in section 16-2333, or those of any other agency active in the case ...”).

<sup>38</sup> D.C. Official Code § 16-2331(b).

<sup>39</sup> D.C. Official Code § 16-2335.02.

<sup>40</sup> D.C. Official Code § 16-2335.02(b).

<sup>41</sup> D.C. Official Code § 16-802.

<sup>42</sup> D.C. Official Code § 16-802(b).

<sup>43</sup> D.C. Official Code § 16-802(c).

<sup>44</sup> D.C. Official Code § 16-802(d).

When a movant is determined to be actually innocent, they are entitled to the following relief:

The Court shall summarize in the order the factual circumstances of the challenged arrest and any post-arrest occurrences it deems relevant, and, if the facts support such a conclusion, shall rule as a matter of law that the movant did not commit the offense for which the movant was arrested or that no offense had been committed.<sup>45</sup>

The Court will “order that the movant’s name be redacted to the extent practicable from records that are not sealed”.<sup>46</sup> Prosecuting, law enforcement, corrections, and supervisory agencies are directed “to seal any records that identify the movant as having been arrested, prosecuted, or convicted.”<sup>47</sup> The Court will also order the prosecutor to destroy electronic records of the criminal case “except for a restricted-access file that would permit the prosecutor and law enforcement agencies to retrieve sealed records if ordered to do so by the Court.”<sup>48</sup> While the Clerk of Court must purge the movant’s electronic records,<sup>49</sup> they are allowed “to maintain a record so long as the record is not retrievable by the identification of the movant.”<sup>50</sup>

Current District law also allows for persons arrested for or charged with eligible misdemeanor offenses to seal their record, provided they have satisfied certain waiting periods.<sup>51</sup> Ineligible misdemeanors include domestic violence, driving under the influence, and misdemeanor sexual abuse.<sup>52</sup> The movant must wait two years since the termination of the case before filing the motion<sup>53</sup> and must not have a disqualifying arrest or conviction.<sup>54</sup> A movant can file a motion to seal – notwithstanding a disqualifying misdemeanor or felony conviction – if five years have passed since the completion of that disqualifying misdemeanor’s sentence. Similarly, a movant can file a motion to seal – notwithstanding a disqualifying felony conviction – if ten years have elapsed since the completion of the disqualifying felony’s sentence.

There is a similar process for moving to seal non-misdemeanor convictions.<sup>55</sup> A movant must wait four years since the termination of the case, or “if the case was terminated before charging by the prosecution, a waiting period of at least 3 years has elapsed since the termination of the case.”<sup>56</sup> The movant must generally also not have a disqualifying arrest on their record, though this requirement is subject to the same passage of time exceptions discussed for sealing misdemeanor convictions.<sup>57</sup>

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<sup>45</sup> D.C. Official Code § 16-802(h)(1)(A).

<sup>46</sup> D.C. Official Code § 16-802(h)(2)(B).

<sup>47</sup> D.C. Official Code § 16-802(h)(4)(A).

<sup>48</sup> D.C. Official Code § 16-802(h)(4)(B).

<sup>49</sup> D.C. Official Code § 16-802(h)(6)(A).

<sup>50</sup> D.C. Official Code § 16-802(h)(6)(B).

<sup>51</sup> D.C. Official Code § 16-803(a).

<sup>52</sup> D.C. Official Code § 16-801(9).

<sup>53</sup> D.C. Official Code § 16-803(a)(1)(A).

<sup>54</sup> D.C. Official Code § 16-803(a)(1)(B).

<sup>55</sup> D.C. Official Code § 16-803(b)(1).

<sup>56</sup> D.C. Official Code § 16-803(b)(1)(A).

<sup>57</sup> D.C. Official Code § 16-803(b)(1)(B).

Despite the various forms of record sealing offered in the District, several advocates commented on how these remedies are unavailable to trafficking survivors, including Elizabeth Landau, Staff Attorney with the Amara Legal Center:

[M]any crimes survivors have been forced to commit will never even be eligible for sealing. This includes almost all felonies, misdemeanors if they have an additional ineligible offense in any other jurisdiction, and if an eligible misdemeanor is paired with an ineligible offense.<sup>58</sup>

Ms. Landau went on to provide a specific example she had with a client:

For example, the Amara Legal Center worked with a human trafficking survivor with a prostitution conviction in D.C., who also had a record in other jurisdictions. Her trafficker moved her around the East Coast and forced her to commit more serious crimes against her will. Years after she was able to escape from trafficking, she came to us for help with sealing her records. But she was shocked to learn that her D.C. misdemeanor prostitution conviction – her only D.C. criminal record – would never be eligible to be sealed under the current law because her record in other jurisdictions disqualified her from relief. This has prevented her from countless opportunities, ranging from employment to even being able to chaperone a school fieldtrip for her child.<sup>59</sup>

Advocates also explained how the current sealing laws do not offer the type of comprehensive relief trafficking survivors need. Ms. Landau specifically commented on the inadequacy of sealing, as opposed to expungement or vacatur:

The intent of D.C.'s records sealing statutes is to rehabilitate past offenders and strengthen communities by removing barriers to housing and employment and other necessities. However, the current D.C. statute does not provide adequate relief to human trafficking survivors because it fails to affirmatively recognize that trafficking survivors are victims of crime who are forced to commit crimes under duress. While some criminal records are able to be sealed, the experience of being trafficked continues to haunt our clients, as their records are merely placed in a nonpublic file. This means that they often resurface and are available to law enforcement, courts, prosecutors, licensing agencies, public employers, schools, and daycare facilities and childcare facilities to be used for any lawful purpose or upon order of the court for good cause shown.<sup>60</sup>

Because the District is one of the last jurisdictions to implement post-arrest and -conviction relief for trafficking survivors, the Committee has been in the unique position to survey relief efforts across the country and craft a progressive and comprehensive record sealing law that

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<sup>58</sup> *Committee on the Judiciary & Public Safety Public Hearing on Bill 22-0329, the "Trafficking Survivors Relief Amendment Act of 2017"* (oral testimony of Elizabeth Landau, Staff Attorney, Amara Legal Services), available at [http://dc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=4108](http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4108).

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

enables survivors to successfully reintegrate into society and affirms the notion that they were victims rather than perpetrators.

### III. Committee Reasoning

*The Trafficking Survivors Relief Amendment Act would right an injustice played out here in the nation's capital against the most vulnerable victims of crime. These survivors deserve to have the chance to [...] attend college, gain access to affordable housing, find sustaining employment, and put the abuse behind them.*<sup>61</sup>

#### a. *Overview of the Committee Print*

The Committee Print does not alter any of the elements or penalties for criminal offenses in the D.C. Code. Rather, it creates a judicial process by which victims of human trafficking can request to have convictions vacated and criminal records that did not result in convictions expunged for certain criminal offenses. Specifically, the bill creates procedures by which an individual can apply to the Superior Court for either the vacatur of convictions of eligible offenses or the expungement of arrest records for any offense that resulted in non-conviction. To qualify for relief, the conduct of the individual that resulted in the conviction or criminal record must be the direct result of the person having been a victim of human trafficking.

#### b. *Definitions*

The Committee Print defines the terms “eligible offense,” “ineligible offense,” and “[v]ictim of trafficking.” The term “ineligible offense” is defined by listing the most serious criminal offenses, convictions for which are ineligible for vacatur. The ineligible offenses listed in the Committee Print are:

1. Assault with intent to kill or poison, or to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse (D.C. Official Code § 22-401)<sup>62</sup>;
2. Sex trafficking of children (D.C. Official Code § 22-1834);
3. Murder in the first degree (D.C. Official Code § 22-2101);
4. Murder in the first degree — Placing obstructions upon or displacement of railroads (D.C. Official Code § 22-2102);
5. Murder in the second degree (D.C. Official Code § 22-2103);
6. Murder of a law enforcement officer (D.C. Official Code § 22-2106);
7. Solicitation of murder (D.C. Official Code § 22-2107(a));

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<sup>61</sup> *Committee on the Judiciary & Public Safety Public Hearing on Bill 22-0329, the “Trafficking Survivors Relief Amendment Act of 2017”* (oral testimony of Andrea Powell, Founder, FAIR Girls), available at [http://dc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=4108](http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4108).

<sup>62</sup> D.C. Code § 22-401 also criminalizes assaults with intent to commit robbery. It is the Committee’s intent that assault with intent to commit robbery be an eligible offense. The Committee finds that assaults coupled with the intent to commit robbery do not rise to the same level of severity as the other criminal intents addressed in § 22-401.



8. Armed carjacking (D.C. Official Code 22-2803(b)(1));
9. First degree sexual abuse (D.C. Official Code § 22-3002);
10. First degree child sexual abuse (D.C. Official Code § 22-3008);
11. First degree sexual abuse of a minor (D.C. Official Code § 22-3009.01);
12. First degree sexual abuse of a secondary education (D.C. Official Code § 22-3009.03);
13. First degree sexual abuse of a ward, patient, client, or prisoner (D.C. Official Code § 22-3009.03);
14. First degree sexual abuse of a patient or client (D.C. Official Code § 22-3009.03);
15. Acts of terrorism (D.C. Official Code §§ 22-3152(1), 22-3152(8), and 22-3153);
16. Manufacture or possession of a weapon of mass destruction (D.C. Official Code § 22-3154(a));
17. Attempt or conspiracy to manufacture or possess a weapon of mass destruction (D.C. Official Code § 22-3154(b));
18. Provision of material support or resources for an act of terrorism (D.C. Official Code § 22-3153(m));
19. Solicitation of material support or resources to commit an act of terrorism (D.C. Official Code § 22-3153(n));
20. Use, dissemination, or detonation of a weapon of mass destruction (D.C. Official Code § 22-3155(a));
21. Attempt or conspiracy to use, disseminate, or detonate a weapon of mass destruction (D.C. Official Code § 22-3155(b)); and
22. Attempt or conspiracy to commit any of the foregoing offenses, except conspiracy to commit sex trafficking of children.

There are a number of justifications for prohibiting the vacatur of convictions for these offenses. First, each of the ineligible offenses constitutes particularly serious or significant social harms, such as death, serious bodily injury, sexual assault, or acts of terrorism. As discussed earlier, the defense of duress can excuse a defendant if their participation in the offense was the result of a reasonable belief that they would suffer immediate serious bodily injury or death if they did not participate in the crime. Most jurisdictions, however, do not allow the defense of duress to excuse murder or other serious offenses. If the underlying rationales for permitting vacatur and expungement are based on the duress defense, the offenses eligible for relief in B22-0329 should reflect the limitations of that defense.

Another reason to exclude serious offenses from vacatur is that, because the conduct involved in these offenses is so serious, there may be value in preserving records of the offense. If, for example, an individual committed first degree child sexual abuse, community members may feel justified in excluding that individual from certain professions involving the care and custody of children. If first degree child sexual abuse were an eligible offense, however, institutions and

employers would be unable to make that determination for themselves, as records of the conduct would be unavailable.

The bill defines an “eligible offense” as “any criminal offense under the District of Columbia Official Code, except an ineligible offense.” Some other jurisdictions only allow records for prostitution and prostitution-related offenses (e.g., solicitation of prostitution, promoting prostitution, and loitering) to be sealed. The Committee Print, however, recognizes that victims are often forced to engage in other forms of criminal conduct while being trafficked. A recurring comment from public witnesses was that the list of eligible offenses should be as broad as possible:

... [I]f the Council and community advocates want to remove criminal records that should have never burdened survivors in the first place, the bill should make the number of eligible offenses as expansive as possible. The list of eligible offenses should be expanded beyond those listed in the proposed bill to also include Titles 48 and 50 of the D.C. Code, which cover drugs and traffic offenses, respectively. Secondly, human trafficking crimes should be moved to the list of eligible offenses, recognizing that victims are often forced by their traffickers to control other victims and are, therefore, charged with human trafficking. We would not be alone in including violent offenses in its vacatur statute.<sup>63</sup>

The Committee supports the expanded list of eligible offenses to include crimes found throughout the D.C. Code, not just in specific titles. The Committee finds the bill has ample procedural safeguards to ensure that convictions and criminal records for truly culpable conduct will not be disturbed. For example, the bill excludes ineligible offenses, those offenses deemed too serious to qualify for relief. Furthermore, the Court makes the final, individualized determination to grant a movant vacatur or expungement in a contested hearing. If the circumstances surrounding an offense were too serious, or the nexus between the movant’s conduct and trafficking status too tenuous, a judge may deny relief.

The last ineligible offenses listed in the Committee Print are attempts or conspiracies to commit any other ineligible offense, “except conspiracy to commit sex trafficking of children.” Conspiracy to commit sex trafficking of children is, consequently, an eligible offense. The exclusion of conspiracy to commit sex trafficking of children from the list of ineligible offenses is a purposeful choice and is the product of the Committee balancing competing interests.

On the one hand, the Committee takes seriously the coercion placed on trafficking victims to commit crimes. As Stacy Reimer of Amara Legal Services testified, a trafficker may even force his own victims to assist him in trafficking other individuals:

The phrase “bottom girl” is used to refer to a victim of human trafficking who is forced by her trafficker to control and coerce his other victims...Often, bottom girls have been trafficked for many years, beginning when they were teenagers.

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<sup>63</sup> *Committee on the Judiciary & Public Safety Public Hearing on Bill 22-0329, the “Trafficking Survivors Relief Amendment Act of 2017”* (oral testimony of Stacey Reimer, Executive Director, Amara Legal Services), available at [http://dc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=4108](http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4108).

On the other hand, the sex trafficking of children is an incredibly serious offense that involves a vulnerable class. If the motivation for the Committee Print is to improve the lives of trafficking victims, one might be skeptical of allowing individuals to vacate convictions for a trafficking offense. Ultimately, the Committee decided to designate the completed act of sex trafficking of children as an ineligible offense. The Committee finds it likely that while a principal trafficker would be charged with the completed act of sex trafficking of children, his accomplices – such as the women of which Ms. Reimer spoke – are more likely to be charged under the *conspiracy* to commit such an offense. Thus, the conspiracy to commit sex trafficking remains eligible. The intent is that principal traffickers not receive the benefit of vacatur or expungement, but that a victim forced to assist her trafficker remain eligible.

Finally, the Committee Print defines a “victim of trafficking” as a person against whom certain D.C. Code or United States Code offenses were committed. Specifically, if a person was a victim of forced labor (§ 22–1832), trafficking in labor or commercial sex acts (§ 22–1833), or sex trafficking (§ 22–1834) under the D.C. Code, they would qualify as a victim of trafficking. Similarly, persons that have been subjected to “severe forms of trafficking in persons” as defined in 22 U.S.C. § 7102(9) or “sex trafficking” as defined in 22 U.S.C. § 7102(10) would also be considered a victim of trafficking.

### *c. Forms of Relief*

The purpose of this bill is not merely to seal the records of conviction from public access.<sup>64</sup> Rather, the intent is to recognize that convictions arising from conduct that was the direct result of being a victim of human trafficking are essentially wrongful convictions. Instead of sealing the records for those convictions, the best remedy is to nullify the conviction altogether. Ms. Andrews of FAIR Girls discussed the dignitary interests addressed by a vacatur statute:

Returning a victim to the status they had prior to being trafficked, at least from a criminal justice perspective, is liberating and empowering in a way that I don’t think anyone who isn’t a survivor can truly understand. There is a fundamental difference between telling someone “We’ll hide your convictions. We’ll keep you hidden” and then saying “You know what, we are freeing you from those convictions. We recognize they are wrongful, and if we had known what we know today, you would have been treated like a victim, not a criminal.”<sup>65</sup>

The Committee Print creates two tiers for relief. The first tier, defined in section 114(a), is for survivors *who were convicted of an eligible offense*:

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<sup>64</sup> Though, as discussed below, a movant may request the more limited relief of sealing if they, for example, anticipate needing access to those records for another matter, such as civil litigation or an immigration proceeding.

<sup>65</sup> *Committee on the Judiciary & Public Safety Public Hearing on Bill 22-0329, the “Trafficking Survivors Relief Amendment Act of 2017”* (oral testimony of Erin Andrews, Director of Policy, FAIR Girls), available at [http://dc.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=4108](http://dc.granicus.com/MediaPlayer.php?view_id=2&clip_id=4108).

A person convicted of an eligible offense may apply by motion to the Superior Court for the District of Columbia to vacate the judgment of conviction and expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offense if the conduct of the person that resulted in the conviction was a direct result of the person having been a victim of trafficking.

Since there will be other types of criminal records that accompanied that survivor's case – arrest records, charging decisions, and records of case proceedings – vacating the conviction will not completely remove the obstacles that individual faces with respect to housing, employment, and education. Therefore, B22-0329 further allows the Court to “enter an order requiring the Court, the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court's order.” With the vacatur of their conviction and the expungement of the associated criminal records, B22-0329 will remove the very serious barriers survivors might otherwise face.

It is important to note that the relevant criterion for the first tier is whether the individual was *convicted* of an *eligible* offense, not whether the individual was *arrested for* or *charged with* an eligible offense at the outset of their criminal case. It is not uncommon for an individual to be arrested for or charged with crimes far more serious than the crime for which they are ultimately found guilty. While arrest records and charging decisions are formal accusations of guilt, they do not reflect the final determination of the facts. A defendant is presumed innocent throughout their criminal case – until they plead guilty to, or found guilty of, a particular criminal offense. The Committee finds it would be inappropriate, then, to deny vacatur of a conviction for an eligible offense to an individual because they were originally charged with an ineligible offense. Therefore, if a trafficking survivor were charged with an ineligible offense (e.g., assault with intent to kill), but later convicted only on an eligible offense (e.g., aggravated assault) for that conduct, that survivor may still be eligible to have the conviction vacated, provided they meet the other requirements.

The Committee Print creates a second tier of relief, defined in section 114(b) for survivors who *were arrested for, or charged with, any offense, but were never convicted of a crime based on that conduct*:

A person arrested but not prosecuted, or whose prosecution was terminated without conviction, for an eligible offense or an ineligible offense, may apply by motion to the Superior Court for the District of Columbia to expunge all records identifying the movant as having been arrested or prosecuted for the offense if the conduct of the person that resulted in the arrest or prosecution was a direct result of the person having been a victim of trafficking.

These survivors may apply to have a judge “expunge all records identifying the movant as having been arrested or prosecuted for the offense.” Movants in this category were ultimately never convicted of either an eligible or ineligible offense. B22-0329 would allow movants in this tier to apply to have records of the arrest and related court proceedings expunged. As was discussed above, arrests and charging decisions are formal accusations that do not carry the same weight as

a finding of guilt by a judge or jury. So while B22-0329 does not permit a *conviction* for an ineligible offense to be vacated, *criminal records* for an ineligible offense may be expunged so long as the individual was not convicted of any offense for that conduct.

Thus, if a survivor were arrested for an eligible offense and convicted of an eligible offense, they would fall into the first tier, discussed above. If a survivor were charged with an eligible offense but ultimately convicted of an ineligible offense, that survivor is not eligible for any form of relief under B22-0329. As stated above, arrests and charging decisions are formal accusations of guilt. If the individual were ultimately never convicted of a criminal offense, they should be permitted to have records of their criminal case expunged.

d. *Motions for Vacatur or Expungement*

B22-0329 requires that a movant's motion be in writing, state the arrests and convictions for which the movant seeks relief, state the reasons the movant is entitled to relief, and be accompanied by supporting documentation. The bill also requires that the relevant prosecutor be served with a copy of the motion, allowing the prosecutor to prepare a response if necessary. A movant may file a motion regardless of whether any other person, such as the person who made the movant a victim of trafficking, has been arrested or convicted for an offense. This provision is to permit a movant to begin the vacatur or expungement process even while cases arising from the same events are pending against possible co-defendants. If a movant can demonstrate that their conviction or arrest was the direct result of their trafficking status, the existence of a co-defendant should not be a barrier to relief.

B22-0329 is not meant to supplant existing forms of post-conviction relief that are available to individuals who are still serving their sentence. The bill, therefore, requires that all criminal proceedings related to the offenses that are the subject of the motion be completed, and that the movant has served their complete sentence. There are, however, no limits placed on the ages of convictions or criminal cases eligible for relief.

When a motion has been filed, the court may conduct a preliminary inquiry into the merits of the motion. If, based on the movant's submission, it "plainly appears" to the court that the movant is not eligible for relief, the court may reject the motion without a hearing. If the movant clears that initial hurdle, and the motion is not dismissed, the court shall order a response from the prosecutor. The prosecutor may file a response in support or opposition of the motion.

The bill also provides for either the movant or the prosecutor to request that the court "place any record or part of a proceeding related to a motion filed under this section under seal." In her testimony on the bill, discussed below, Katerina Semyonova of the Public Defender Service raised the issue of protecting a movant's privacy during the vacatur and expungement process. Without the ability to file their motion under seal, she argued, survivors seeking relief under B22-0329 would be creating a public record describing their trafficking experience or past criminal conduct. Since the purpose of B22-0329 is to allow trafficking survivors to avoid the collateral consequences of criminal records, the Committee finds it appropriate to shield from public access records associated with the actual vacatur and expungement process.

There may also be legitimate reasons for law enforcement and prosecutors to shield the movant's motion and the related proceedings from general public access. If, for example, a law enforcement agency or a prosecutor has reason to believe proceedings for the movant's motion could impact an ongoing investigation, they may request that records related to the motion be sealed.

e. *Evidentiary Standards for Vacatur or Expungement Proceedings*

The Committee Print also sets the standards of proof and evidentiary rules for motions for vacatur and expungement. If a movant is applying for the vacatur of a conviction for an eligible offense, the movant must prove, by clear and convincing evidence, that: (1) the movant was convicted of an eligible offense; (2) the movant is a victim of trafficking; and (3) the conduct by the movant resulting in the conviction was a direct result of the movant having been a victim of trafficking.

If a movant is applying for expungement of records from the *arrest or prosecution* of any offense that did not result in a conviction, the movant must prove that: (1) the movant was arrested but not prosecuted, or the prosecution was terminated without conviction, for an eligible offense or an ineligible offense; (2) the movant is a victim of trafficking; and (3) the conduct by the movant resulting in the conviction was a direct result of the movant having been a victim of trafficking.

The Committee Print does not define the term "direct result." As Nathaniel Erb of Courtney's House testified, similar legislation in other jurisdictions has not defined "direct result", leaving its interpretation to the courts. To his knowledge, states have not encountered difficulties in understanding the term and adjudicating claims. The federal bill, notably, also offers no definition of direct result. That being said, the Committee intends for the Court's inquiry to consider the totality of circumstances, including: the severity of the offense, the form and duration of coercion exerted on the movant, and the nexus between the coercion exerted on the movant and the commission of the act for which the movant seeks relief.

The Committee Print creates a rebuttable presumption that the movant is a victim of human trafficking if they can provide a copy of an "official record from a federal, state, tribal, or local proceeding finding that the movant was a victim of trafficking." The statute provides two examples of such documentation: Certification Letters<sup>66</sup> or Eligibility Letters<sup>67</sup> from the U.S. Department of Health and Human Services. The examples of certification letters and eligibility letters provided in the Committee Print are not exhaustive. The Court should consider any official record that contains a formal finding that the movant was a victim of trafficking.

The Committee Print specifically authorizes the Court to grant a motion based solely on an affidavit or sworn testimony of the movant, provided the movant satisfies the other elements for relief set out in the Committee Print. Of course, it is advisable that movants submit to the Court as

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<sup>66</sup> Office on Trafficking in Persons, U.S. Dep't of Health and Human Services, *Certification Letters* (Dec. 26, 2017), available at <https://www.acf.hhs.gov/otip/victim-assistance/certification-and-eligibility-letters-for-foreign-national-victims>.

<sup>67</sup> Office on Trafficking in Persons, U.S. Dep't of Health and Human Services, *Eligibility Letters* (Aug. 14, 2018), available at <https://www.acf.hhs.gov/otip/victim-assistance/eligibility-letters>

much documentation as is practicable under the circumstances. There may be situations where documentation is scarce due to the passage of time. If the Court finds that a movant's testimony – without more – provides clear and convincing evidence that the movant is entitled to relief, the Court may grant the motion.

f. *Grants and Denials of Motions*

In the event the Court denies a motion, it shall provide its reasons for the denial in writing. If the Court grants a motion to vacate a conviction under section 114a, the Court shall vacate the conviction, dismiss the relevant count with prejudice, and “enter an order requiring the Court, the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court's order.” If the Court grants a motion to expunge under section 114(b), it will similarly order the expungement of records.

There are, however, circumstances where the movant themselves may still wish to access records related to their criminal proceeding. If the movant, for example, becomes involved in civil litigation related to conduct at issue in their motion, access to court records related to the incident may prove valuable. B22-0329 thus allows the movant to request that the Court instead seal those official records, placing them in a nonpublic file. Specifically, prior to the Court's grant of a motion filed under either section 114(a) or 114(b), a movant may request that official records be sealed in lieu of expungement. If a movant requests that the records be sealed, rather than expunged, the Court shall enter an order to “seal all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court's order.” A movant may later request that the Court amend the order to require that those records be expunged.

In response to an order for the vacatur of convictions or expungement of records, the relevant criminal justice agencies must certify to the Court that “all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court's order have been expunged from its records.” The certification must be made within one year after the Court's grant of a motion pursuant to section 116(b) or 116(c). If, however, the movant filed a request to seal their records in lieu of expungement, the certifications must be made within one year of the movant's requests that the Court amend its order to require that the records be expunged. This last provision is to allow movants time to identify records that may be useful to them before criminal justice agencies begin the process of expunging those same records.

There are situations where the records for which the Court orders expungement involve co-defendants. In such cases, the Court may order that only those records, or portions thereof, relating solely to the movant be expunged or sealed.

Somewhat relatedly, there may be cases where a movant was arrested or prosecuted for, or convicted of, a blend of eligible and ineligible offenses. It is the Committee's intent that relief should be granted on an offense-specific basis. If an individual was arrested for a blend of eligible and ineligible offenses, a conviction for an ineligible offense does not foreclose relief with respect to any offenses that would otherwise qualify for relief under sections 114(a) and 114(b). The Court would, in this instance, be right to deny relief with respect to the conviction for the ineligible



offense. The Court may, nevertheless, order vacatur for the conviction of an eligible offenses, or the expungement of records for any arrest or prosecution that resulted in a nonconviction. The court order, in this case, would be limited to “only those records, or portions thereof, relating solely to the offense that is the subject of the court’s order be expunged or sealed.”

The legal effect of the Court’s grant of a motion under sections 114(a) and 114(b) is “to restore the movant, in the contemplation of the law, to the status he or she occupied before being arrested, charged, or convicted.” Accordingly, a movant who is granted relief cannot be guilty of “perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest, charge, trial, or conviction in response to any inquiry made of him or her for any purpose.” Applications for employment, housing, and schooling frequently inquire into an applicant’s criminal history. If a movant is granted vacatur or expungement for certain convictions or arrests, they are under no obligation to disclose those convictions or arrests to entities requesting such information.

Finally, the Committee Print requires that a copy of the Court’s order for vacatur or expungement, as well as the certifications filed with the Court, be provided to the movant or his or her counsel. To ensure the movant has some record of what transpired, these records cannot be expunged, though they may be sealed at the movant’s request. This gives the movant who has been granted relief access to an official record of having received the benefit of vacatur or expungement. Take, for example, a movant who is granted vacatur for an eligible conviction. As discussed above, that individual can deny having been convicted of the offense. If an employer happens to discover the conviction, the employer may conclude the movant misrepresented their criminal history and choose to terminate the movant. The movant, in this case, could provide the Court order to their employer who would, hopefully, reinstate the employee.

#### *g. Appeals*

The Committee Print declares that orders dismissing, granting, or denying a motion filed under section 114 are final orders for the purposes of appeal. This provision is to make clear that such orders are subject to appellate review. The exception is an order denying a motion *with leave to refile*; such orders are not final orders for the purposes of appeal.

### **LEGISLATIVE HISTORY**

June 20, 2017	B22-0329 is introduced by Councilmembers Cheh and Allen.
June 20, 2017	B22-0329 is referred to the Committee on the Judiciary and Public Safety with comments from the Committee on Transportation and the Environment.
June 23, 2017	Notice of Intent to Act on B22-0329 is published in the <i>District of Columbia Register</i> .
September 1, 2017	Notice of Public Hearing on B22-0329 is published in the <i>District of Columbia Register</i> .

September 21, 2017 Public Hearing on B22-0329 is held by the Committee on the Judiciary and Public Safety.

September 20, 2018 Consideration and vote on B22-0329 by the Committee on the Judiciary and Public Safety.

### **POSITION OF THE EXECUTIVE**

The Committee received testimony at its September 21, 2017, public hearing on B22-0329 from Michelle Garcia, Director of the Office of Victim Services and Justice Grants (“OVSJG”):

*Michelle Garcia – Director, Office of Victim Services and Justice Grants*

Director Garcia provided the Executive’s testimony on B22-0329. She testified that the Executive supports the bill as part of the Mayor’s continued efforts to reform the District’s record sealing laws. She said the bill improves re-entry outcomes for victims of human trafficking by removing barriers that stem from a criminal record.

Director Garcia oversees OVSJG, which provides funding to several organizations that serve trafficking survivors. She testified that trafficking cases involve the use or threat of force to compel victims to engage in labor and commercial sex acts. Trafficking victims often must collaborate with their trafficker to survive and may commit crimes in doing so. Unfortunately, survivors are often not recognized as victims when they are arrested, prosecuted, convicted, and ultimately sentenced for crimes committed under duress. Even when survivors break free from their trafficker, they may continue to be haunted by trauma related to their victimization, as well as arrest and conviction records.

Director Garcia discussed several efforts in the District aimed at providing relief to trafficking survivors, stating that OVSJG had funded nonprofit organizations in FY16 that provided services to more than 1,100 trafficking victims in the District. Despite these supportive services, a criminal record can prevent a survivor from getting a job, furthering their education, receiving housing assistance, applying for a loan, or obtaining immigration relief – to name only a few of the collateral consequences justice-involved persons experience.

Director Garcia agreed with the introduced bill’s list of non-eligible offenses, and she argued for a more limited form of record sealing for “dangerous” crimes and “crimes of violence” as defined in D.C. Code § 23-1331, where only law enforcement would still have access to the records. She supports vacatur and expungement for all other crimes without modification.

### **ADVISORY NEIGHBORHOOD COMMISSION COMMENTS**

The Committee did not receive testimony or comments from Advisory Neighborhood Commissions.

## **WITNESS LIST AND HEARING RECORD**

On Thursday, September 21, 2017, the Committee on the Judiciary and Public Safety held a public hearing on B22-0329, the “Trafficking Survivors Relief Amendment Act of 2018.” A video recording of the public hearing can be viewed at <https://entertainment.dc.gov/page/demand-2017>. The following witnesses testified at the hearing or submitted written statements:

### **Public Witnesses**

*Stacie Reimer – Executive Director, Amara Legal Center*

Ms. Reimer testified that the Amara Legal Center strongly supports the bill. Amara Legal Services provides direct legal services—including record sealing and expungement—to sex workers and survivors of human trafficking in the D.C. Metro area. During her work with that population, she found that current District record sealing laws provide insufficient relief for victims and that a new vacatur law is necessary.

Ms. Reimer stated that human trafficking victims are sometimes coerced by their traffickers to commit crimes. While these crimes are often prostitution-related offenses, the trafficker may force the victim to engage in crimes related to drugs, firearms, and even human trafficking itself. In theory, victims who have been forced by their trafficker to commit crimes can argue they were acting under duress at the time of the offense and are, therefore, excused from criminal liability. In Ms. Reimer’s experience, however, victims do not assert the defense of duress because they would risk their safety by testifying against their trafficker. If individuals acting under duress should be excused from criminal liability, then vacatur laws help correct what was essentially a wrongful conviction.

Ms. Reimer also recommended that the list of eligible offenses be broadened to capture more cases in which a victim was operating under duress. Specifically, the list of eligible offenses should be expanded to also include offenses contained within Titles 48 (Drugs) and 50 (Traffic Offenses), as well as human trafficking offenses. She named several states—Wyoming, Idaho, Kentucky, and New Mexico—with record sealing laws that are all, in some way, even more expansive than B22-0329.

*Elizabeth Landau – Staff Attorney, Amara Legal Center*

Ms. Landau testified that the Amara Legal Center strongly supports the bill. As the Center’s D.C. attorney, she has personally filed or supervised the filing of motions to seal records for several trafficking survivors. Record sealing laws rehabilitate past offenders and remove barriers to housing and employment created by criminal records.

Current D.C. record sealing laws are inadequate because they merely place the record in a non-public file. That file can still be accessed by a number of entities, including law enforcement agencies, professional licensing boards, and schools. She also discussed several ways the list of offenses eligible for sealing under current law is too restrictive. The new vacatur law would

provide improved relief to human trafficking victims and reflects the idea that these individuals should not have been arrested and charged in the first place.

*Andrea Powell – Founder & Executive Director, FAIR Girls*

Ms. Powell testified that the bill would have a positive impact on the survivors of human trafficking. Her organization, FAIR Girls, is headquartered in the District and serves young women and girls who are survivors of all forms of human trafficking. FAIR Girls also operates the only transitional housing program for that population in the District, the Vida Home.

Ms. Powell discussed the prevalence of human trafficking and other forms of commercial sexual exploitation in the District, and she shared demographic information for the women she serves. In 2015 and 2016, approximately half of the women served had experienced one arrest or conviction prior to receiving services at FAIR Girls. Ms. Powell described the social costs in treating victims like criminals and described occasions when a client's rehabilitation and re-entry into society was undermined by their criminal record. One client lost a scholarship because of a prostitution conviction and ultimately abandoned her dream of attending college; another client was unable to get a job because of a prostitution conviction, which led to her becoming homeless and even more vulnerable. The bill, she argued, would help prevent the injustice of denying trafficking victims access to college, affordable housing, and steady employment.

*Barbara Amaya – Public Witness*

Ms. Amaya testified about her experience as a survivor of human trafficking. She was trafficked from ages 12 to 22 in the District and later New York City. She was arrested on multiple occasions before she ultimately escaped that situation. She discussed the stigmatizing effect having a criminal record had on both her personal well-being and employment opportunities. She recounted the joy of having her New York charges vacated under that state's more expansive vacatur law. Ms. Amaya expressed her hope that same opportunity would be extended to survivors with D.C. convictions. Anyone who was forced, tricked, or coerced into an activity should not be viewed as having consented to that activity and should, therefore, not be punished.

*Nathaniel Erb – Policy Counsel, Courtney's House*

Mr. Erb spoke about his experience drafting legislation similar to B22-0329 in other jurisdictions. He stated that more than thirty states have implemented record sealing laws for victims of human trafficking. Mr. Erb testified that the current bill was modeled after a bill pending in Congress. The federal bill was used as a model because of the amount of scrutiny it has received and withstood, the support it has received from community stakeholders, and the unique relationship between the District of Columbia and federal courts. He stated that the "direct result" test in the current bill has been successfully implemented in other jurisdictions. He agreed that the bill should be extended to cover offenses contained within Titles 48 (Drugs) and 50 (Traffic Offenses). He stated that Courtney's House is particularly concerned that individuals rightfully convicted of a violent offense not be granted relief under the bill, but he believes that requiring a judicial determination protects against a rightful conviction being vacated. During questions, Mr.

Erb testified that he has seen very little misuse of the law in the form of frivolous motions for relief for rightful convictions.

*Erin Andrews – Director of Policy, FAIR Girls*

Ms. Andrews, drawing on her own experience as a prosecutor, remarked on how the old model of prosecuting human trafficking cases was ineffective. That approach misunderstood the coercion at play in human trafficking and treated victims as criminal defendants to leverage them against their traffickers. She testified that prosecutors are now moving to a model that lowers recidivism by allowing survivors to engage in services and stabilize their lives. She opined that in an ideal world—one with trauma-informed and victim-centered prosecution—the District would not need a bill like B22-0329. But given the enforcement history of trafficking cases and risk of misidentification, B22-0329 is a necessary safety net. Many of these survivors just want to rebuild their lives, but the barrier of wrongful convictions is standing in their way.

Ms. Andrews testified that the bill creates a rigorous, adversarial process that drew on elements of the bill's federal counterpart. She also stated that the bill was drafted with the intent of being expansive in order to reflect the reality of trafficking—that is, that victims are forced to engage in conduct that can include criminal offenses other than prostitution. She spoke about how sealing and vacatur statutes in other jurisdictions are ineffective because they do not cover all the offenses – including drug, firearms, and theft offenses – that a trafficker may coerce victims into committing.

*Conchita Sarnoff – Executive Director, Alliance to Rescue Victims of Trafficking*

Ms. Sarnoff testified in support of her colleagues and victims advocating for the passage of the bill. She also recounted a trafficking case she investigated.

*Toni McIntosh-Harper – Representative, Federal City Alumnae Chapter, Delta Sigma Theta Sorority, Inc.*

Ms. McIntosh-Harper testified that the Federal City Alumnae Chapter of the Delta Sigma Theta Sorority supports the bill. Delta Sigma Theta is an organization of predominately black, college-educated women devoted to uplifting their community and the rights of women. She stated that during the course of their trafficking, victims are required to perform free labor and commercial sex acts, are moved away from their homes and support systems, and are forced to rely on their traffickers for food and security. Victims are also coached by their traffickers to lie to law enforcement. Many survivors distrust law enforcement officials because of arrest-related trauma from their time being trafficked. The survivors who eventually escape their captivity must face the stigma of their criminal record. This bill would help victims recover from the trauma of their captivity. She retold the stories of many victims who have experienced horrible treatment in the course of their trafficking. She also spoke about the continuing need to educate law enforcement and other groups to recognize and humanely treat victims of human trafficking.

## **Government Witnesses**

*Mina Malik – Deputy Attorney General, Public Safety Division, Office of the Attorney General for the District of Columbia*

Ms. Malik testified that fighting human trafficking is a priority for the Office of Attorney General and summarized several efforts the Office has taken to combat trafficking in the District. She stated that Attorney General Racine supports the bill in light of his Office's experience assisting survivors of trafficking. Despite that support, Ms. Malik cautioned that the bill may limit law enforcement's investigative tools. She recommends that the bill define the term "direct result" to give courts more guidance. Secondly, there is no time limitation for filing a motion to vacate after a conviction has been obtained. By the time an individual files a motion for relief, the government may no longer possess the documents or witnesses it needs to legitimately rebut the motion. Finally, the bill does not state if anyone, such as law enforcement agencies or prosecutors, can access records after they have been ordered expunged. Ms. Malik recommends that a provision be added allowing law enforcement officials to access the records because they may aid future investigations with similar fact patterns.

*Katerina Semyonova – Special Counsel, Public Defender Service for the District of Columbia*

Ms. Semyonova testified that the Public Defender Service supports the bill but emphasized the need for even more comprehensive reforms to record sealing laws in the District. She summarized the barriers criminal records pose with respect to employment, educational, and housing opportunities. She praised elements of the bill that allow for vacating an unlimited number of offenses related to trafficking, as opposed to current sealing laws that only permit the sealing of one conviction, but she also pointed to a number of perceived drawbacks in the bill. For example, if the prosecutor objects to the motion, the victim must wait for a hearing and recount painful experiences in open court. Records of that proceeding would remain public if the motion is denied, creating a record of their trafficking experience where none previously existed. Allowing for the filing of motions under seal or making hearings on the motion nonpublic could address these downsides. Ms. Semyonova also argued that eligible offenses should include weapons offenses in Title 7 and drug offenses in Title 48—offenses that are frequently arise in the context of human trafficking. She asked that the Council consider codifying an affirmative defense for conduct committed as a direct result of human trafficking.

## **IMPACT ON EXISTING LAW**

B22-0329 amends The Prohibition Against Human Trafficking Amendment Act of 2010, effective October 23, 2010 (D.C. Law 18-239; D.C. Official Code § 22-1831 *et seq.*), to create a process by which individuals can apply to the Superior Court of the District of Columbia for the vacatur of convictions and expungement of criminal records that did not result in a conviction for certain offenses that were the direct result of the individual having been a victim of trafficking.

## **FISCAL IMPACT**

The Committee adopts the fiscal impact statement of the District's Chief Financial Officer.

## **SECTION-BY-SECTION ANALYSIS**

**Section 1** Provides the long and short titles.

**Section 2** (a) Amends the Prohibition Against Human Trafficking Amendment Act of 2010 to define the terms "eligible offense", "ineligible offense", and "victim of trafficking".

(b) Amends the Prohibition Against Human Trafficking Amendment Act of 2010 to establish the procedures for moving to vacate convictions and expunge criminal records that were the direct result of being a victim of human trafficking; adds new Section 114, which outlines the two types of motions available, as well as the procedures for filing those motions; adds new section 115, which discusses procedures for the Court's review of a motion, possible responses by the prosecutor, the burden of proof, and evidentiary rules; adds new section 116, which sets forth standards for denying a motion and describes the form an order granting vacatur, expungement, or temporary sealing must take, as well as deadlines for criminal justice agencies to complete the expungement process; and adds new section 117, which discusses the appealability of motions created under the bill.

**Section 3** Contains the fiscal impact statement.

**Section 4** Contains the effective date.

## **COMMITTEE ACTION**

On September 20, 2018, the Committee on the Judiciary and Public Safety held an Additional Meeting to consider and markup B22-0329, the "Trafficking Survivors Relief Act of 2018." The meeting was called to order at 3:05 p.m. Chairperson Charles Allen recognized a quorum consisting of himself and Councilmembers Anita Bonds, Mary M. Cheh, David Grosso, and Vincent Gray. Councilmember Cheh thanked Councilmember Allen for joining her in introducing B22-0329. She praised the bill as placing the District at the forefront of jurisdictions providing relief to trafficking survivors for their criminal records. Chairperson Allen, without objection, moved the Committee Report and Print for B22-0329 en bloc with leave for staff to make technical and conforming changes. After an opportunity for discussion, the Committee voted 5-0 to approve the Committee Report and Print with the Members voting as follows:

**YES:** Chairperson Allen and Councilmembers Bonds, Cheh, Grosso, and Gray

**NO:** None



*PRESENT:*     None

*ABSENT:*     None

**LIST OF ATTACHMENTS**


- (A)    B22-0329, as introduced
- (B)    Notice of Public Hearing, as published in the *District of Columbia Register*
- (C)    Agenda and Witness List
- (D)    Witness Testimony
- (E)    Fiscal Impact Statement
- (F)    Legal Sufficiency Determination
- (G)    Comparative Committee Print
- (H)    Committee Print

**ATTACHMENT A**

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**1350 Pennsylvania Avenue, N.W.**  
**Washington D.C. 20004**

**Memorandum**

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To : Members of the Council  
  
From : Nyasha Smith, Secretary to the Council  
Date : June 20, 2017  
Subject : Referral of Proposed Legislation

Notice is given that the attached proposed legislation was introduced in the Committee of the Whole on Tuesday, June 20, 2017. Copies are available in Room 10, the Legislative Services Division.

TITLE: "Trafficking Survivors Relief Amendment Act of 2017", B22-0329

INTRODUCED BY: Councilmembers Cheh and Allen

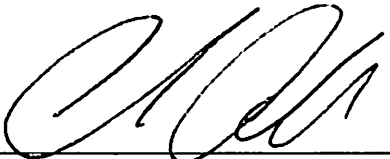
CO-SPONSORED BY: Councilmembers Nadeau, Grosso, R. White, Gray, Evans, McDuffie, and Silverman

The Chairman is referring this legislation to the Committee on Judiciary and Public Safety with comments from the Committee on Transportation and the Environment.

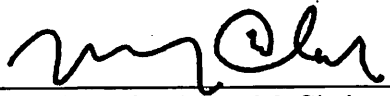
Attachment

cc: General Counsel  
Budget Director  
Legislative Services

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Councilmember Charles Allen



Councilmember Mary M. Cheh

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend the Prohibition Against Human Trafficking Amendment Act of 2010 to allow for the vacatur of certain convictions and expungement of certain arrest records when such convictions or arrests are a direct result of an offender having been a victim of trafficking.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Trafficking Survivors Relief Amendment Act of 2017".

Sec. 2. The Prohibition Against Human Trafficking Amendment Act of 2010, effective October 23, 2010 (D.C. Law 18-239; D.C. Official Code § 22-1831 *et seq.*) is amended as follows:

(a) Section 101 (D.C. Official Code § 22-1831) is amended as follows:

(1) New paragraphs (4A) is added to read as follows:

"(4A) "Covered offense" means an offense under Title 22 of the D.C. Official Code, except a non-covered offense."

(2) A new paragraph (6A) is added to read as follows:

"(6A) "Noncovered offense" means:

"(A) Assault with intent to kill, rob, or poison, or to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse under section 803 of An Act To

34 establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321;  
35 D.C. Official Code § 22-401);

36                   “(B) Assault with intent to commit mayhem or with dangerous weapon  
37 under section 804 of An Act To establish a code of law for the District of Columbia, approved  
38 March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-402);

39                   “(C) Assault with intent to commit any other offense under section 805 of  
40 An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31  
41 Stat. 1322; D.C. Official Code § 22-403);

42                   “(C) Aggravated assault under section 806a of An Act To establish a code  
43 of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code  
44 § 22-404.01);

45                   “(D) Aggravated assault on a public vehicle inspection officer under  
46 section 806c of An Act To establish a code of law for the District of Columbia, approved March  
47 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-404.03);

48                   “(E) Aggravated assault on member of police force, campus or university  
49 special police, or fire department under section 432(c) of the Revised Statutes of the District of  
50 Columbia (D.C. Official Code § 22-405(c));

51                   “(F) Mayhem or maliciously disfiguring under section 854 of An Act To  
52 establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1322;  
53 D.C. Official Code § 22-406);

54                   “(G) Sex trafficking of children under section 104;

55                   “(H) Murder in the first degree, murder in the second degree,  
56 manslaughter, or murder of law enforcement officer under An Act To establish a code of law for

57 the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code §§ 22-  
58 2101, 22-2102, 22-2103, and 22-2106);

59 “(I) First-degree burglary or armed carjacking under An Act to establish a  
60 code of law for the District of Columbia, approved March 3, 1901, (31 Stat. 1321; D.C. Official  
61 Code §§ 22-801(a) and 22-2803(b));

62 “(J) An offense under Title II of the Anti-Sexual Abuse Act of 1994,  
63 effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3002 *et seq.*);

64 “(K) An offense under section 3 of the District of Columbia Protection  
65 Against Minors Act of 1982, effective March 9, 1983 (D.C. Law 4-173; D.C. Official Code § 22-  
66 3102);

67 “(L) A crime of violence when subject to the enhancements under section  
68 2 of An Act To control the possession, sale, transfer and use of pistols and other dangerous  
69 weapons in the District of Columbia, to provide penalties, to prescribe rules of evidence, and for  
70 other purposes, approved July 8, 1932 (47 Stat. 650; D.C. Official Code § 22-4502); and

71 “(M) Conspiracy to commit an offense listed in subparagraphs (A), (B),  
72 (C), (D), (E), (F), (H), (I), (J) or (L) of this paragraph.

73 (3) A new paragraph (12) is added to read as follows:

74 “(12) “Victim of trafficking” means a person against whom an offense is  
75 committed under forced labor pursuant to section 102, trafficking in labor or commercial sex acts  
76 pursuant to section 103, sex trafficking of children pursuant to section 104, or trafficking in  
77 persons pursuant to the Victims of Trafficking and Violence Protection Act, approved October  
78 28, 2000 (114 Stat. 1469; 22 U.S.C. § 7101 *et seq.*)”.

79 (b) New sections 114, 115, 116, 117, 118, 119, and 120 are added to read as follows:

80           “Sec. 114. Motion to vacate conviction or expunge arrest for victim of trafficking.

81           “(a) A person convicted of a covered offense may apply by motion to the Superior Court  
82 for the District of Columbia to vacate the judgment of conviction if the conduct or alleged  
83 conduct of the person that resulted in the conviction was a direct result of the person having been  
84 a victim of trafficking.

85           “(b) A person arrested for a covered offense may apply by motion to the Superior Court  
86 for the District of Columbia to expunge all records of the arrest if the conduct or alleged conduct  
87 of the person that resulted in the arrest was a direct result of the person having been a victim of  
88 trafficking.

89           “(c) A person arrested for a noncovered offense may apply by motion to the Superior  
90 Court for the District of Columbia to expunge all records of the arrest if the conduct or alleged  
91 conduct of the person was a direct result of the person having been a victim of trafficking; and

92                   “(1) The person was acquitted of the offense;

93                   “(2) The government dismissed or did not pursue criminal charges against the  
94 person for the noncovered offense; or

95                   “(3)(A) The charges against the person for the noncovered offense were reduced  
96 to a covered offense; and

97                   “(B) The person was acquitted of the covered offense, the government  
98 dismisses or does not pursue charges against the person for the covered offense, or a subsequent  
99 conviction for the covered offense was vacated.

100           “(d) The movant’s motion shall:

101                   “(1) Be in writing;

102                   “(2) State the offense or offenses for which the person seeks relief;

103                   “(3) Describe supporting evidence; and

104                   “(4) Include copies of documents showing that the motion should be granted.

105                   “(e) The court shall not require a person other than the movant to have been convicted or  
106 arrested for a covered or noncovered offense before the movant can file a motion.

107                   “Sec. 115. Hearing on a motion to vacate conviction or expunge arrest for victim of  
108 trafficking.

109                   “(a) Within 90 days of the filing of the movant’s motion, the government may:

110                         “(1) File a motion in support;

111                         “(2) File a motion in opposition; and

112                         “(3) File a motion under seal to seal the motion and any proceedings related to the  
113 motion during the pendency of any ongoing prosecution of other individuals related to the  
114 covered offense.

115                   “(b) If the government timely files a motion in opposition to the movant’s motion, the  
116 court shall hold a hearing on the movant’s motion in a reasonable time after the filing.

117                   “(c) If the government does not file a motion in opposition to the movant’s motion, the  
118 court may hold a hearing on the movant’s motion within a reasonable time after the filing date of  
119 the motion.

120                   “(d) If the court finds that a movant’s motion offers no new or additional evidence  
121 beyond that contained in previously considered motions, or that the movant acted fraudulently or  
122 in bad faith in filing the motion, the court may deny the motion without a hearing.

123                   “(e) There shall be a rebuttable presumption that a movant is a victim of trafficking if the  
124 movant includes in the motion a copy of an official record, certification, or eligibility letter from  
125 a federal, state, tribal, or local proceeding, including an approval notice or an enforcement



certification generated from a federal immigration proceeding, showing that the movant was a victim of trafficking, including as a victim of a person charged with a violation of the Victims of Trafficking and Violence Protection Act, approved October 28, 2000 (114 Stat. 1469; 22 U.S.C. § 7101 *et seq.*), during the time that the offense took place for which the movant was arrested or convicted.

“(f) The court may consider other evidence it determines is of sufficient credibility and probative value to grant relief, including an affidavit or sworn testimony from a professional from whom the movant has sought assistance associated with being a victim of trafficking, including a trained professional staff member of a victim services organization, a legal services organization, a licensed social worker, or a medical professional.

“Sec. 116. Denial of motion.

“(a) If the court denies the movant’s motion, the court shall state the reasons for denial in writing.

“(b) If the motion was denied due to a curable deficiency, the court shall allow the movant sufficient time to cure the deficiency.

“Sec. 117. Grant of motion.

“(a) The court may grant a motion to vacate a conviction or expunge an arrest for a covered offense if, after notice to the government and an opportunity to be heard, the court finds, by clear and convincing evidence that:

“(1) The movant was convicted or arrested for a covered offense; and

“(2) The conduct or alleged conduct by the movant resulting in a conviction or arrest for the covered offense was a direct result of the movant having been a victim of trafficking.

149           “(b) The court may grant a motion to expunge an arrest for a noncovered offense if, after  
150 notice to the government and an opportunity to be heard, the court finds, by clear and convincing  
151 evidence that:

152                   “(1) The movant was arrested for a noncovered offense and the conduct or alleged  
153 conduct resulting in the arrest was a direct result of the movant having been a victim of  
154 trafficking; and

155                   “(2)(A) The movant was acquitted of the noncovered offense;

156                           “(B) The government dismissed or did not pursue charges against the  
157 movant for the noncovered offense; or

158                           “(C) The charges against the movant for the noncovered offense were  
159 reduced to a covered offense and the movant was acquitted of the covered offense, the  
160 government dismissed or did not pursue charges against the movant for the covered offense, or a  
161 subsequent conviction for the covered offense is vacated.

162           “Sec. 118. Order upon grant of motion.

163                   “(a) If the court grants a motion to vacate a conviction, the court shall immediately vacate  
164 the conviction for cause, set aside the verdict, enter a judgment of acquittal, and, unless the  
165 movant makes a motion pursuant to subsection (h) of this section, enter an expungement order  
166 that directs that all references to the following be removed from all official records:

167                           “(1) The arrest of the person for the covered offense;

168                           “(2) The initiation of criminal proceedings against the person relating to the  
169 covered offense; and

170                           “(3) The results of the criminal proceedings initiated against the person.

171           “(b) Within one year of the court’s grant of a motion to vacate, withdrawal of a motion  
172       filed pursuant to subsection (h) of this section, or withdrawal of a motion to seal pursuant to  
173       section 115(a)(2), the clerk of the court, the prosecutor, a law enforcement agency, and a pretrial,  
174       corrections, or community supervision agency shall file a certification with the court and provide  
175       notice to the movant certifying that to the best of its knowledge and belief, all references that  
176       identify the movant as having been arrested, prosecuted, or convicted of the offense at issue have  
177       been removed from its records and that it has completed its duties in accordance with subsection  
178       (a) of this section.

179           “(c) In a case involving co-defendants in which the court orders the movant’s conviction  
180       vacated, the court may order that only those records, or portions thereof, relating solely to the  
181       movant be redacted.

182           “(d) A conviction vacated pursuant to this section shall not be regarded as a conviction  
183       under law. The movant shall be considered to have the status occupied by the movant before the  
184       conviction or the initiation of criminal proceedings related to such conviction.

185           “(e) If the court grants a motion to expunge an arrest, unless the movant makes a motion  
186       pursuant to subsection (h) of this section, the court shall immediately enter an expungement  
187       order that directs that all references to the following be removed from all official records:

188                       “(1) The arrest of the person for the covered offense;

189                       “(2) The initiation of criminal proceedings against the person relating to the  
190       covered offense; and

191                       “(3) The results of criminal proceedings initiated against the person, if any.

192           “(f) Within one year of the court’s grant of a motion to expunge, withdrawal of a motion  
193       filed pursuant to subsection (h) of this section, or withdrawal of a motion to seal pursuant to

194 paragraph (a)(2) of section 115, the clerk of the court, the prosecutor, a law enforcement agency,  
195 and a pretrial, corrections, or community supervision agency shall file a certification with the  
196 court and provide notice to the movant certifying that to the best of its knowledge and belief, all  
197 references that identify the movant as having been arrested or investigated for the offense at  
198 issue have been removed from its records and that it has completed its duties in accordance with  
199 subsection (e) of this section.

200 “(g) In a case involving co-defendants in which the court orders the movant’s arrest  
201 expunged, the court may order that only those records, or portions thereof, relating solely to the  
202 movant be redacted.

203 “(h) A movant may seek to stay the expungement process set forth in this section and  
204 move to have records placed under seal pending the outcome of any other proceeding related to  
205 being a victim of trafficking, including immigration proceedings. The records shall remain under  
206 seal and not be expunged until the movant withdraws the motion.

207 “(i) An arrest expunged pursuant to this section shall not be regarded as an arrest under  
208 law. The movant shall be considered to have the status occupied by the movant before the arrest  
209 or the initiation of criminal proceedings related to such arrest, if any.

210 “Sec. 119. Appeal of order.

211 “An order granting or denying a motion filed pursuant to section 114 or 119 shall be  
212 appealable pursuant to D.C. Official Code § 11-721.

213 “Sec. 120. Additional actions by the court.

214 “Upon granting a motion filed pursuant to section 114 or 119, the court may take such  
215 additional action as the court deems appropriate.”.

216 Sec. 3. Applicability.

217           This act shall apply to an arrest or conviction occurring before, on, or after the effective  
218   date of this act.

219           Sec. 4. Fiscal impact statement.

220           The Council adopts the fiscal impact statement in the committee report as the fiscal  
221   impact statement required by section 4a of the General Legislative Procedures Act of 1975,  
222   approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

223           Sec. 5. Effective date.

224           This act shall take effect following approval of the Mayor (or in the event of veto by the  
225   Mayor, action by the Council to override the veto), a 60-day period of congressional review as  
226   provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December  
227   24, 1973 (87 Stat. 813; D.C Official Code § 1-206.22(c)(2)), and publication in the District of  
228   Columbia Register.

## **ATTACHMENT B**

**Council of the District of Columbia  
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY  
REVISED NOTICE OF PUBLIC HEARING  
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

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**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON  
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

**ANNOUNCES A PUBLIC HEARING ON**

**BILL 22-0170, THE "AT-RISK TENANT PROTECTION CLARIFYING AMENDMENT  
ACT OF 2017"**

**BILL 22-0329, THE "TRAFFICKING SURVIVORS RELIEF AMENDMENT  
ACT OF 2017"**

**BILL 22-0288, THE "HUMAN RIGHTS AMENDMENT ACT OF 2017"**

**AND**

**PROPOSED RESOLUTION 22-0357, THE "SENSE OF THE COUNCIL SUPPORTING  
PASSAGE OF THE EQUALITY ACT RESOLUTION OF 2017"**

**Thursday, September 21, 2017, 9:30 a.m.  
Room 120, John A. Wilson Building  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004**

On Thursday, September 21, 2017, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will hold a public hearing on Bill 22-0170, the "At-Risk Tenant Protection Clarifying Amendment Act of 2017", Bill 22-0329, the "Trafficking Survivors Relief Amendment Act of 2017", Bill 22-0288, the "Human Rights Amendment Act of 2017", and Proposed Resolution 22-0357, the "Sense of the Council Supporting Passage of the Equality Act Resolution of 2017". The hearing will take place in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 9:30 a.m. *Please note that this notice has been revised to reflect the inclusion of B22-0288 and PR22-0357.*

The stated purpose of Bill 22-0170, the "At-Risk Tenant Protecting Clarifying Amendment Act of 2017", is to amend Chapter 39 of Title 28 of the District of Columbia Official Code to clarify that

the Office of the Attorney General is authorized to enforce the Consumer Protection Procedures Act against housing providers that violate certain consumer protection laws that protect tenants.

The stated purpose of Bill 22-0329, the "Trafficking Survivors Relief Amendment Act of 2017", is to amend the Prohibition Against Human Trafficking Amendment Act of 2010 to allow for the vacatur of certain convictions and expungement of certain arrest records when such convictions or arrests are a direct result of an offender having been a victim of trafficking.

The stated purpose of Bill 22-0288, the "Human Rights Amendment Act of 2017", is to amend the Human Rights Act of 1977 to permit a complainant to bring a civil action in any court of competent jurisdiction *de novo* and without regard to any Office of Human Rights or Commission on Human Rights proceedings or findings, and to require complainants to be notified of these rights when they file a complaint with the Office and at the time of a determination or withdrawal of the matter.

The stated purpose of Proposed Resolution 22-0357, the "Sense of the Council Supporting Passage of the Equality Act Resolution of 2017", is to declare the Sense of the Council that the Congress of the United States pass the Equality Act of 2017 to ensure that federal civil rights laws are fully inclusive of protections on the basis of sex, gender identity, and sexual orientation in employment, housing, and public accommodations.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee via email at [judiciary@dccouncil.us](mailto:judiciary@dccouncil.us) or at (202) 727-8275, and provide their name, telephone number, organizational affiliation, and title (if any), by **close of business Monday, September 18**. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring **twenty single-sided copies** of their written testimony and, if possible, also submit a copy of their testimony electronically in advance to [judiciary@dccouncil.us](mailto:judiciary@dccouncil.us).

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at [judiciary@dccouncil.us](mailto:judiciary@dccouncil.us) or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on October 5.**



**Council of the District of Columbia  
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY  
NOTICE OF PUBLIC HEARING  
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

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**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON  
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

**ANNOUNCES A PUBLIC HEARING ON**

**BILL 22-0170, THE "AT-RISK TENANT PROTECTION CLARIFYING AMENDMENT  
ACT OF 2017"**

**BILL 22-0329, THE "TRAFFICKING SURVIVORS RELIEF AMENDMENT  
ACT OF 2017"**

**Thursday, September 21, 2017, 9:30 a.m.  
Room 120, John A. Wilson Building  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004**

On Thursday, September 21, 2017, Councilmember Charles Allen, Chairperson of the Committee on the Judiciary and Public Safety, will hold a public hearing on Bill 22-0170, the "At-Risk Tenant Protection Clarifying Amendment Act of 2017", and on Bill 22-0329, the "Trafficking Survivors Relief Amendment Act of 2017". The hearing will take place in Room 120 of the John A. Wilson Building, 1350 Pennsylvania Avenue, N.W., at 9:30 a.m.

The stated purpose of Bill 22-0170, the "At-Risk Tenant Protecting Clarifying Amendment Act of 2017", is to amend Chapter 39 of Title 28 of the District of Columbia Official Code to clarify that the Office of the Attorney General is authorized to enforce the Consumer Protection Procedures Act against housing providers that violate certain consumer protection laws that protect tenants.

The stated purpose of Bill 22-0329, the "Trafficking Survivors Relief Amendment Act of 2017", is to amend the Prohibition Against Human Trafficking Amendment Act of 2010 to allow for the vacatur of certain convictions and expungement of certain arrest records when such convictions or arrests are a direct result of an offender having been a victim of trafficking.

The Committee invites the public to testify or to submit written testimony. Anyone wishing to testify at the hearing should contact the Committee via email at [judiciary@dccouncil.us](mailto:judiciary@dccouncil.us) or at (202) 727-8275, and provide their name, telephone number, organizational affiliation, and title (if any), by close of business Monday, September 18. Representatives of organizations will be allowed a maximum of five minutes for oral testimony, and individuals will be allowed a maximum of three minutes. Witnesses are encouraged to bring twenty single-sided copies of their written testimony

and, if possible, also submit a copy of their testimony electronically in advance to [judiciary@dccouncil.us](mailto:judiciary@dccouncil.us).

For witnesses who are unable to testify at the hearing, written statements will be made part of the official record. Copies of written statements should be submitted to the Committee at [judiciary@dccouncil.us](mailto:judiciary@dccouncil.us) or to Nyasha Smith, Secretary to the Council, 1350 Pennsylvania Avenue, N.W., Suite 5, Washington, D.C. 20004. **The record will close at the end of the business day on October 5.**

## ATTACHMENT C

**Council of the District of Columbia  
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY  
AGENDA & WITNESS LIST  
1350 Pennsylvania Avenue, N.W., Washington, D.C. 20004**

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**COUNCILMEMBER CHARLES ALLEN, CHAIRPERSON  
COMMITTEE ON THE JUDICIARY & PUBLIC SAFETY**

**ANNOUNCES A PUBLIC HEARING ON**

**BILL 22-0170, THE "AT-RISK TENANT PROTECTION CLARIFYING AMENDMENT  
ACT OF 2017"**

**BILL 22-0329, THE "TRAFFICKING SURVIVORS RELIEF AMENDMENT  
ACT OF 2017"**

**BILL 22-0288, THE "HUMAN RIGHTS AMENDMENT ACT OF 2017"**

**AND**

**PROPOSED RESOLUTION 22-0357, THE "SENSE OF THE COUNCIL SUPPORTING  
PASSAGE OF THE EQUALITY ACT RESOLUTION OF 2017"**

**Thursday, September 21, 2017, 9:30 a.m.  
Room 120, John A. Wilson Building  
1350 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004**

**AGENDA**

- I. CALL TO ORDER**
- II. OPENING REMARKS**
- III. WITNESS TESTIMONY**

**B22-0170, the "At-Risk Tenant Protection Clarifying Amendment Act of 2017"**

- i. Public Witnesses**

1. Jennifer Ngai Lavallee, Supervising Attorney, Consumer Law Unit, Legal Aid Society of the District of Columbia
2. Kirsten Williams, Vice President of Government Affairs, D.C., Apartment and Office Building Association
3. Michael Sindram, Public Witness

ii. Government Witness

1. Jimmy Rock, Deputy Director, Office of Consumer Protection, Office of the Attorney General for the District of Columbia

**B22-0329, the "Trafficking Survivors Relief Amendment Act of 2017"**

i. Public Witnesses

1. Stacie Reimer, Executive Director, Amara Legal Center
2. Elizabeth Landau, Staff Attorney, Amara Legal Center
3. Jessica Taylor, Public Witness
4. Andrea Powell, Founder/Executive Director, FAIR Girls
5. Phylisia Henry, Director of Operations, Courtney's House
6. Nathaniel Erb, Policy Counsel, Courtney's House
7. Erin Andrews, Director of Policy, FAIR Girls
8. Barbara Amaya, Public Witness
9. Conchita Sarnoff, Executive Director, Alliance to Rescue Victims of Trafficking
10. Toni McIntosh Harper, Vice President of Programs, The Federal City Alumnae Chapter, Delta Sigma Theta Sorority, Inc.

ii. Government Witnesses

1. Michelle Garcia, Director, Office of Victim Services & Justice Grants
2. Mina Malik, Deputy Attorney General, Public Safety Division, Office of the Attorney General for the District of Columbia
3. Katya Semyonova, Special Counsel to the Director for Policy, Public Defender Service for the District of Columbia

**B22-0288, the "Human Rights Amendment Act of 2017"**

i. Public Witnesses

1. Jonathan Puth, Metropolitan Washington Employment Lawyers Association

2. Donald M. Temple, The Law Offices of Donald M. Temple, P.C.
3. Laura Brown, Executive Director, First Shift Justice Project
4. Kristin Alden, Alden Law Group PLLC
5. Denise M. Clark, Clark Law Group, PLLC
6. Dyana Forester, Political & Community Affairs Director, United Food & Commercial Workers Union Local 400

ii. Government Witness

1. Mónica Palacio, Director, Office of Human Rights

**PR22-0357, the "Sense of the Council Supporting Passage of the Equality Act Resolution of 2017"**

i. Public Witnesses

ii. Government Witnesses

**IV. ADJOURNMENT**

## ATTACHMENT D

## AMARA LEGAL CENTER

**TITLE:** Bill 22-0239. Trafficking Survivors Relief Amendment Act of 2017  
**FROM:** Stacie Reimer, Executive Director, Amara Legal Center  
**COMMITTEE:** Judiciary and Public Safety Committee, Council of the District of Columbia  
**HEARING DATE:** September 21, 2017  
**POSITION:** Support

The Amara Legal Center strongly supports the Trafficking Survivors Relief Amendment Act of 2017. Amara provides direct legal services to sex workers and survivors of human trafficking in the DC metropolitan area, including record sealing and expungement. I am Amara's Executive Director and have been working with survivors of human trafficking for four years. I want to address the need for a vacatur statute in DC.

Amara opened to fill a gap in services for survivors of human trafficking. At the time Amara began, there were no other organizations providing legal services specifically for survivors in DC. We worked closely with existing service providers to identify the legal needs of survivors. One of the largest needs was assisting individuals to seal their DC records. However, as will be explained today, we soon realized this avenue was insufficient.

Often victims of human trafficking are forced to commit crimes while under the control of a trafficker. The vast majority of the crimes that we see our clients being arrested for are low level misdemeanors. Of these misdemeanors, roughly 90% of them are prostitution or prostitution-related offenses. A typical situation involves a trafficker posting online commercial sex advertisements for one of his victims against her will and then using threats of bodily harm to coerce her into the selling of sex for money.

However, we cannot ignore that victims are also forced to commit more serious crimes. These crimes range from drug offenses and firearm offenses to the crime of human trafficking itself. The phrase "bottom girl" is used to refer to a victim of human trafficking who is forced by her trafficker to control and coerce his other victims. This often involves committing crimes under duress. Often bottom girls have been trafficked for many years, beginning when they were teenagers. The bottom girls, and other victims, become saddled with criminal records. As a result, they are prevented from obtaining employment, housing, education and other necessities. Today, survivors have testified as to what they were charged with and how those charges have negatively impacted their lives.

The purpose of vacatur is recognizing that survivors are often forced to commit many crimes, even violent crimes, under extreme duress. In our experience, survivors do not assert a duress defense during their trials, because doing so would mean risking their safety by testifying against their trafficker. Because the defense of duress is not practically available to survivors of human trafficking during their trials, this statute is necessary. If we agree that survivors should not be criminalized for committing crimes while under duress, then this statute is righting their wrongful conviction.





Finally, if the Council and community advocates want to remove criminal records that should never have burdened survivors in the first place, the bill should make the number of covered offenses as expansive as possible. The list of covered offenses should be expanded beyond those the proposed bill to include Titles 7, 48, and 50 of the DC code which cover firearms, drugs and traffic offenses, respectively. Next, human trafficking crimes should be moved to the list of covered offenses, recognizing that victims are often forced by their traffickers to control other victims and are therefore charged with human trafficking. DC would not be alone in including violent offenses in its vacatur statute. Wyoming permits survivors to vacate convictions for all crimes committed as a direct or incidental result of being a victim of trafficking. Idaho also permits "prostitution and any other offense determined by the court to be appropriate," so long as a coercion defense is available for the charge. Similarly, Kentucky permits survivors to expunge all crimes except for felonies that cause death or serious injury and New Mexico permits vacatur of all crimes except for homicide. Finally, Florida allows for all offenses to be vacated as long as the person has not been deemed a "habitual violent felony offender."<sup>1</sup>

Thank you for your time and attention to this important issue. I am happy to answer any questions you have now or through additional written testimony.

Sincerely,

A handwritten signature in black ink that reads "Stacie Reimer". The signature is fluid and cursive, with the first name "Stacie" and last name "Reimer" clearly distinguishable.

Stacie Reimer, Esq.  
Executive Director  
[stacie.reimer@amaralegal.org](mailto:stacie.reimer@amaralegal.org)  
202-603-0957



**TITLE:** Bill 22-0239. Trafficking Survivors Relief Amendment Act of 2017  
**FROM:** Amara Legal Center  
**COMMITTEE:** Judiciary and Public Safety Committee, Council of the District of Columbia  
**HEARING DATE:** September 21, 2017  
**POSITION:** Support

The Amara Legal Center strongly supports the Trafficking Survivors Relief Amendment Act of 2017. For the past four years, Amara has provided direct legal services specifically to sex workers and survivors of human trafficking in the DC metropolitan area. One of the largest needs Amara identified was that of criminal record sealing and expungement. Unfortunately, many of our clients continue to be burdened by criminal records from past victimization. While assisting individuals to seal their criminal records, Amara realized the current record sealing procedure in DC was insufficient to properly address client needs.

### **I. Background**

The purpose of vacatur is recognizing the harsh reality that survivors are often forced to commit many crimes, even violent crimes, under extreme duress. In Amara's experience, survivors do not assert a duress defense during their trials, because doing so would mean risking their safety by testifying against their trafficker. Because the defense of duress is not a practical option for survivors of human trafficking during their trials, this statute is necessary. If we agree that survivors should not be criminalized for committing crimes while under duress, then this statute serves to right their wrongful convictions.

The vast majority of the crimes that Amara's clients are arrested for are low level misdemeanors. Of these misdemeanors, roughly 90% of them are prostitution or prostitution-related offenses. A typical situation involves a trafficker posting online commercial sex advertisements for one of his victims against her will and then using threats of bodily harm to coerce her into the selling of sex for money.

However, we cannot ignore that victims are also forced to commit more serious crimes. These crimes range from drug offenses and firearm offenses to the crime of human trafficking itself. The phrase "bottom girl" is used to refer to a victim of human trafficking who is forced by her trafficker to control and coerce his other victims. This often involves committing crimes under duress. Often bottom girls have been trafficked for many years, beginning when they were teenagers. The bottom girls, and other victims, become saddled with criminal records. As a result, they are prevented from obtaining employment, housing, education and other necessities. In order to properly address these situations, the vacatur statute must be written by directly facing the painful reality that survivors are forced to commit serious offenses, instead of the mythical idea that survivors are only forced to commit certain low level offenses.



## **II. DC's Current Record Sealing Statute is Insufficient**

### **A. Sealed Records Under the Current Law Are Still Accessible**

Currently, a survivor who files to seal her records still faces several barriers. While records sealed under D.C. Code § 16-803 are placed in a non-public file, they remain available to law enforcement, courts, prosecutors, licensing agencies, public employers, schools and child care facilities, to be used "for any lawful purpose."<sup>1</sup> Sealed records may also be used in civil litigation relating to their arrest or conviction.<sup>2</sup> Records may be made available to others "upon order of the Court for good cause shown."<sup>3</sup> An individual whose record has been sealed under D.C. Code § 16-803 may deny the arrest or conviction, except in response to an inquiry from one of the entities expressly authorized to access the records.<sup>4</sup> These records can continue to haunt our clients and deny them opportunities, be used against them in family court proceedings involving their children, and can prevent foreign born survivors from obtaining lawful immigration status.

### **B. The Intent of Sealing is not the Same as Vacatur**

The intent of D.C.'s record sealing statutes is to rehabilitate past offenders and strengthen communities by removing barriers to housing, employment and other necessities. However, the current DC statute does not provide adequate relief to human trafficking survivors because it fails to affirmatively recognize that trafficking survivors are victims of crime who were forced to commit crimes under duress by their trafficker.

The fact that the records are merely placed in a non-public file means that their ability to resurface and be used by law enforcement, potential employers or otherwise reinforces the myth that our clients are criminals and not victims. Vacatur seeks to wipe the survivor's slate clean and restore their record to a state where it would be had the trafficking never occurred.

### **C. The Current Statute Doesn't Seal Enough Records**

Many crimes survivors have been forced to commit will never be eligible for sealing. This includes almost all felonies, misdemeanors if they have an additional ineligible offense in any jurisdiction, and if an eligible misdemeanor is paired with an ineligible offense. Human trafficking survivors should not continue to be penalized for the actions of their abusers. This new vacatur law would provide an avenue for relief specific to survivors of human trafficking that is unavailable under the current sealing statute, and provides validation and affirmation of victims that they are not criminals and should not have been arrested and charged in the first place.

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<sup>1</sup> DC Code §§ 16-806(b), 16-801(11).

<sup>2</sup> DC Code §§ 16-806(b)(2).

<sup>3</sup> DC Code § 16-806(b)(3).

<sup>4</sup> DC Code §§ 16-803(m), 16-801(11).

## AMARA LEGAL CENTER

The Amara Legal Center worked with a human trafficking survivor with a prostitution conviction in DC who also had a record in other jurisdictions. Her trafficker moved her around the east coast and forced her to commit more serious crimes against her will. Years after she was able to escape from trafficking, she came to Amara for help sealing her records. She was shocked to learn that her DC misdemeanor prostitution conviction, her only DC criminal record, would never be eligible for sealing under the current law because her record in other jurisdictions disqualified her from relief. This has prevented her from countless opportunities, ranging from employment to even being able to chaperone a school field trip for her child.

### III. Recommendations

If the Council and community advocates want to remove criminal records that should never have burdened survivors in the first place, the bill should make the number of covered offenses as expansive as possible. The list of covered offenses should be expanded beyond those stated in the proposed bill to include Titles 7, 48, and 50 of the DC code which cover firearms, drugs and traffic offenses, respectively.

Similarly, the Council should decrease the list of crimes on the **non-covered** offense list as far as possible. The Council should legislate to address reality and not wishful thinking. The reality is that victims are often forced by their traffickers to commit violent felonies and control other victims and are therefore charged with serious crimes, like sex trafficking and burglary. The bill also places a high burden on the survivor to demonstrate he or she committed the offenses under the control of a trafficker and grants the presiding judge such a great amount of discretion that it is extremely unlikely that the court would grant any fraudulent vacatur motions.

As to finer procedural points, no time limits should be added to the bill and the proceedings and filings should take place under seal. At the September Council hearing, at least one prosecutorial agency suggested that time limitations should be placed on individuals seeking to file a petition for vacatur. However, there is no set period of time it takes for a survivor to recover from being trafficked. It could take years, if not decades, for a survivor to come forward. The Council should not create a new barrier to the survivor completing his or her recovery.

Finally, all proceedings and filings should be automatically sealed, even if the request for vacatur is denied. When a survivor finally gains the courage to come forward to mend his or her past, that past should not be made even more public by way of public hearings and publicly available court filings. Indeed, this would likely have a deterrent effect on survivors coming forward. The purpose of vacatur is to erase evidence of their past exploitation, not to highlight it.

### IV. Other Jurisdictions

DC would not be alone in including violent offenses in its vacatur statute. Wyoming permits survivors to vacate convictions for all crimes committed as a direct or incidental result of being a victim of trafficking.<sup>5</sup> Idaho also permits "prostitution and any other offense determined

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<sup>5</sup> Wyo. Stat. Ann. 6-2-708.



by the court to be appropriate,” so long as a coercion defense is available for the charge.<sup>6</sup> Similarly, Kentucky<sup>7</sup> permits survivors to expunge all crimes except for felonies that cause death or serious injury and New Mexico<sup>8</sup> permits sealing of all crimes except for homicide. Finally, Florida allows for all offenses to be vacated as long as the person has not been deemed a “habitual violent felony offender.”<sup>9</sup>

## V. Conclusion

Vacating convictions for survivors of human trafficking is a crucial part of our clients’ recovery. Given the purpose of vacatur, which acknowledges the lack of mens rea and presence of duress when a survivor was forced to commit a crime, it would not be enough for the Council to merely expand the current DC sealing statute. It is vital that the law recognize the duress that was present in when a survivor was forced to commit a crime. Moreover, this vacatur law would provide expansive relief to many survivors. Victims of trafficking are forced to commit many more crimes than prostitution and a realistic law must be in place to right historical wrongs.

Respectfully,

Yvette Butler, Esq.  
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Amara Legal Center  
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<sup>6</sup> Idaho Code Ann. 67-3014

<sup>7</sup> K.Y. Rev. Stat. Ann. 529.160

<sup>8</sup> N.M. Stat. Ann. 30-52-1.2

<sup>9</sup>

## **Testimony of the Human Trafficking Prevention Project The University of Baltimore School of Law**

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**BILL NO:** Bill 22-0329  
**TITLE:** Trafficking Survivors Relief Amendment of 2017  
**COMMITTEE:** Committee on the Judiciary & Public Safety  
**HEARING DATE:** September 21, 2017  
**POSITION:** SUPPORT

In addition to the abuse, coercive control, and manipulation victims of human trafficking routinely face, many of these individuals are arrested for and convicted of crimes they are forced to commit by their traffickers. Survivors who have trafficking-related criminal records often experience difficulties obtaining safe housing and gainful employment, which keeps them trapped in poverty and vulnerable to continued exploitation.

The Trafficking Survivors Relief Amendment Act of 2017 (TSRA) would create a process for the judiciary to review these convictions and arrests. It gives judges the authority, but not the requirement, to undo certain convictions and arrests, if the movant can prove that the acts underlying the charges occurred as a direct result of human trafficking. The Human Trafficking Prevention Project (HTPP) at the University of Baltimore School of Law supports this bill because it will enhance the effectiveness of the District of Columbia's human trafficking framework by providing access to justice for survivors who have been criminalized as a result of their involvement with a trafficker.

Data recently obtained from a national survey of both sex and labor trafficking survivors echoes the need for access to this form of relief, with nearly 91% of survivors surveyed, including survivors in the DC area, reporting having been arrested in their lifetimes. Of that 91%, over half of the respondents stated that the entirety of their criminal records could be directly linked to their trafficking experience. Of those reporting a history of arrest, 72.7% reported barriers to employment because of their criminal records, while 57.6% reported barriers to accessing housing.

The HTPP is currently the only program within the DMV region to focus exclusively on addressing the post-conviction needs of trafficking survivors. As pioneers of this work within the region, we are acutely aware of the challenges criminalized trafficking survivors face, and the ways that vacatur laws can assist survivors in moving forward with their lives and healing from the trauma they have experienced because of their trafficking experience.

It is essential that any post-conviction relief available to survivors account for the types of crimes survivors are commonly forced to commit, as well as the fact that survivors are often forced to commit crimes in multiple states. It is also imperative that the law restore survivors to the position they were in prior to their involvement with the criminal justice system. This requires that any post-conviction processes not merely shield survivors' criminal records from public view, but instead undo the convictions themselves, in recognition of the fact that these survivors were forced, defrauded, or coerced into committing these acts, and, at the same time, were victims of crimes themselves.

The District of Columbia's current sealing statute, which is the jurisdiction's primary method for addressing the collateral consequences of criminal convictions, simply does not provide adequate relief

for survivors who were criminalized within the District. Primarily, many of the crimes victims are commonly forced to commit are ineligible for sealing under the current process. Additionally, many victims have subsequent convictions in other jurisdictions because their traffickers transport them from one state to another, both as a method of control as well in an attempt to escape detection by law enforcement. Under the current sealing law, subsequent convictions in other jurisdictions are often a bar to sealing criminal records in DC. Finally, shielding a survivor's criminal record from public view does not provide the same emotional relief as vacating a conviction does, a process which instead acknowledges the individual's status as a survivor of a crime, rather than a perpetrator. As a program that has guided many survivors through the vacatur process here in Maryland, the effect is truly transformative.

The TSRA would remedy this significant legal gap by providing an avenue for survivors of human trafficking who were forced to commit crimes by their traffickers, thereby expanding and strengthening the District's response to this heinous crime. For this reason, as well as the reasons above, the Human Trafficking Prevention Project at the University of Baltimore School of Law strongly supports Bill 22-0329, and respectfully urges a favorable report.

**For more information, please contact:  
Jessica Emerson, LMSW, Esq.  
jemerson@ubalt.edu**



**BILL NO:** B22-0329

**TITLE:** "Trafficking Survivors Relief Amendment Act of 2017"

**COMMITTEE:** Judiciary

**HEARING DATE:** September 21, 2017

**POSITION:** SUPPORT

Good afternoon Chairman Allen and Judiciary Committee Members,

My name is Erin Andrews. I am the Director of Policy of FAIR Girls, a nonprofit based here in D.C. serving girls aged 11 to 26 who have escaped all forms of human trafficking. Prior to that I was an Assistant United States Attorney in Washington, D.C. prosecuting sexual assault, child abuse, and human trafficking cases on a local and federal level. I am testifying in support of B22-329 today.

FAIR Girls was established in 2004 and has served more than a 1,000 young women and girl survivors of human trafficking. FAIR Girls provides emergency response services, non-emergent direct services, counseling, job and educational assistance, court advocacy, and more. In 2014, FAIR Girls opened the Vida Home, a 90-day safe home for young women survivors of trafficking aged 18 to 26. It is currently the only home of its type in Washington, D.C. serving this population of survivors. Annually, FAIR Girls serves approximately 150 survivors and approximately 50 young women in our Vida Home. Our services are individually tailored and focus on the strengths and resiliencies of our clients and our policy positions are rooted in their experiences and needs. FAIR Girls is an engaged member of the DC Anti Trafficking Task Force where our Executive Director has co-chaired the training and victim services committee and I currently co-chair the policy working group.

Historically, FAIR Girls' trafficking clients have all too often been treated as criminals despite both federal and local legislation that categorizes them as victims of a violent crime. In 2015, FAIR Girls' clients were arrested 50% of the time they engaged with law enforcement. Victims of trafficking specifically do not self-identify for many reasons, including the coercive and threatening relationship between a victim and a trafficker, the psychological, emotional and physical exploitation that victims suffer, and the trauma-bonding that may occur with a trafficker. Survivors will tell you that self-identification as a trafficking victim is a healing process that may take years.

Consequently, trafficking victims have been misidentified and re-victimized by the criminal justice system. Instead of being treated as innocent victims who need services, trafficking



survivors have suffered through being arrested, detained, and convicted for crimes that they were forced to commit by their traffickers. These arrests and convictions, and the negative stigma and destabilization that accompany them, have a profound impact on a trafficking victim's ability to attend school, find gainful employment or secure safe housing.

Over the last fifteen years, through concerted efforts at raising awareness and specialized human trafficking training, we have made progress in the law enforcement community. Through educating our law enforcement officers, prosecutors, and judges, we have begun to recognize that the old model of prosecuting human trafficking cases - that is, treating victims as criminal defendants in order to leverage them into forced cooperation against their traffickers - is ineffective, unproductive, and misunderstands the coercive nature of the victimization that occurs in human trafficking. In D.C. this shift in awareness is exemplified by the fact that in 2011 the "Prostitution Enforcement Unit" at MPD evolved into the "Human Trafficking Unit." Experienced prosecutors now recognize that these cases can and will be prosecuted more effectively by supporting survivors, not by perpetuating the victimization started by their traffickers, and by connecting them to resources that will help them stabilize their lives independent of their traffickers. With this progress toward trauma-informed, victim-centered prosecutions, one day we hope to not need laws like The Trafficking Survivors Relief Amendment Act. However, despite the best efforts of the law enforcement community, we still get it wrong sometimes.

That is why vacatur bills, like the Trafficking Survivors Relief Amendment Act, are a necessary and important safety net for victims who have managed to escape their traffickers but are still not truly free, for victims who want to stop the cycle of recidivism and become productive members of our community but cannot because of these unjust convictions. This bill allows for this safety net, while still providing a rigorous and adversarial process that ensures that it will not be abused. Vacatur laws, like this one, are the next logical, essential step to supporting victims of human trafficking in their attempt to transition to independent, confident, inspired survivors - a result that leads to an overall reduction of recidivism. The statistics support the reality our survivors have been telling us all along, that if victims cannot obtain housing or jobs because of convictions while being trafficked, they will end up being trafficked again. The Trafficking Survivors Relief Amendment Act is a balanced and commonsense approach to give victims another tool to make this life-saving transition.

The Trafficking Survivors Relief Amendment Act was drafted with the intention to allow flexibility in balancing the competing societal concerns of holding offenders accountable for criminal conduct and the very real complexities of being a victim of human trafficking. One of the main reasons why vacatur and sealing laws in other states have been largely insufficient and ineffective to date is that they do not take into account all the types of crimes victims are being forced to commit. As prosecutors and advocates working with victims know, the reality is a trafficker forces his victims to commit a vast array of crimes, not just prostitution, to keep his criminal enterprise operating while avoiding any direct criminal exposure. I have personally seen how these victims are forced to take drugs, give them to other victims, and sell them to johns. They are forced to drive themselves and other victims to locations to engage in commercial sex while under the influence of drugs and alcohol or without their license, as

traffickers often take their identification documents. Traffickers will stash their firearms under the seat of the car while victims are driving or in their apartments. Traffickers often force their victims to steal from those that they are sold to, exponentially increasing their risk of violence. Victims are forced to miss court dates, compounding their criminal liability, because they cannot escape their trafficker's control. Perhaps most tragically, victims are forced by their traffickers to perpetuate the cycle of abuse they have suffered by making them recruit, train, create online ads for and drive other victims, even minors, around for the purpose of trafficking them. This is how a trafficker makes his criminal enterprise thrive - on the backs of his victims and hidden from criminal exposure.

There is national recognition that it is time to stop the cycle of re-victimization, and that it is time to help free these victims from the vestiges of their modern day slavery. The Trafficking Survivors Relief Amendment Act is precisely the kind of legislation envisioned by Congress when it passed the Justice for Victims of Trafficking Act of 2015, Title X of which sets forth criteria for preferential grant consideration for applicants from states that have in effect a law that provides "(1) a process by which a human trafficking survivor can move to vacate any arrest or conviction records for a non-violent offense committed as a direct result of human trafficking; ... and (4) does not require an individual who is a human trafficking survivor to provide official documentation in order to receive protection under the law." This is also why federal lawmakers introduced last year a bipartisan bill in both the House and Senate, that is supported by advocates, survivors, and the National District Attorneys Association, entitled the Trafficking Survivors Relief Act, which allows victims the opportunity to vacate convictions that were the direct result of their trafficking. With the passage of this legislation, D.C. has the opportunity to become a leader in righting the wrongs of the past for trafficking victims, by helping survivors free themselves from the shackles of unjust criminal charges so that they may be truly free to rebuild their lives.



September 21, 2017

Good Morning, my name is Tina Frundt. I am the Founder and Executive Director of Courtney's House and a survivor of child sex trafficking.

I want to thank Chairman Allen and fellow members of the Judiciary and Public Safety Committee for the opportunity to speak to you today about **Bill 22 – 0329 Trafficking Survivors Relief Act of 2017 (TSRA)**.

Founded in 2008, Courtney's House is a 501(c)3 organization operating out of the Washington, DC Metropolitan Area aimed at meeting the needs of domestic minor sex trafficking survivors. Courtney's House programs fall into four categories: Drop-In Center, Survivor Services, Investigative Services, and Education and Advocacy. Since its founding, Courtney's House has provided recovery services to more than 1,000 survivors of sex trafficking ages 12 - 21.

The primary demographic served is African-American and Latino youth, both males and females. Courtney's House is the only survivor-run African American anti-trafficking organization in our region, as well as the only one that serves males and LGBTQ community who are survivors of sex trafficking.

As a direct service provider, many youth enter our program with convictions for nonviolent crimes as a result of their trafficking situation. Non-violent crimes related to trafficking like jaywalking, petty theft, motor vehicle theft and prostitution are the most common. In 2016, 50% of our survivors received referrals for legal services. This year, 40% of survivors received referrals for legal services.

Convictions as a result of trafficking creates obtaining essential quality of life services like housing, public assistance programs and jobs very challenging. The District of Columbia will lead in making meaningful steps toward bringing justice to survivors. TSRA will set a precedent and send a clear message to neighboring jurisdictions that survivors of sex trafficking should be recognized as being victims of a crime – not criminals. Additionally, this will send a message to survivors that their rights matter and that they deserve a chance to completely vacate their criminal history of nonviolent crimes as a result of their trafficking situation.

Tina Frundt

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202-525-1426



Erb & Associates

September 20, 2017

*Testimony on Behalf of Courtney's House, Inc.*

**BILL NUMBER:** B22-0329  
**TITLE:** Trafficking Survivors Relief Amendment Act of 2017  
**COMMITTEE:** Judiciary & Public Safety  
**HEARING DATE:** September 21, 2017  
**POSITION:** SUPPORT

Chairman Allen and Esteemed Members of the Committee,

Please receive this written testimony in support of Councilmember Cheh's bill titled the "Trafficking Survivor's Relief Amendment Act" on behalf of my client, Courtney's House, a survivor run service provider for victims of human trafficking, based in the District of Columbia.

In addition to supporting the amazing work of Courtney's House, I have had the opportunity to assist other stakeholders on legislation similar to this in Maryland, Texas, Washington, and before the U.S. Congress. The matter before you today concerns a procedure which over 30 states have implemented in some form. These procedures allow for judicial review of arrests and/or convictions of victims of human trafficking where evidence of some form of force or coercion is present. You will have heard from several stakeholders in the District as to the need for enacting a similar procedure here in the District and the myriad of reasons why victims have these records. Further, you will find submitted testimony from practitioners that have trained attorneys on these laws and from survivors who place these measures as their top legislative priority.

In meetings with stakeholders from civil society and government, I have heard broad support for the concept. In working with Councilmember Cheh's Office, I and my colleagues have endeavored to draft a bill that pulls from prior experience of other states and improves upon known shortcomings thereof. We have endeavored to learn from elsewhere but create a bill that fits the specific context of the District

I will endeavor herein to provide context behind the language as drafted. Should there need to be revisions, I hope this helps to retain the spirit of the bill in crafting such.

*Structure:*

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The bill, as structured, most closely resembles legislation currently before Congress to establish a vacatur procedure for federal crimes. The reasoning for this is firstly A) that bill is the most recently drafted procedure in this vain and, to my knowledge, has received the greatest scrutiny and buy-in of stakeholders. It has gained the endorsement of groups such as the National District Attorney's Association, the American Bar Association, and over 170 human trafficking focused organizations including several serving populations in the District. B) A second reasoning for this is the unique relationship the District has to the Federal Court system and that bill's dealing with the Courts.

However, as mentioned, we have worked to not simply copy that or other bills but draft language that fits the context of what practitioners here are seeing. We have chosen therein to be somewhat explicit so has to provide a clearer interpretation. Some state statutes in this vain left the procedure and other specifics up to the determination of the Courts. However, in this explicitly, we endeavored to retain the full authority of the Court in ruling as it sees fit.

***Eligibility:***

To be eligible to receive relief under this bill, a movant must demonstrate A) that they are a victim of human trafficking as outlined and B) that the covered offense occurred as a direct result of the movant being a victim of human trafficking. "Direct result of" was chosen due to its existence in statute - my colleague at FAIR Girls can speak more to this. Many of these types of statutes elsewhere use similar terminology. The intent is to require that a movant prove causality between the underlying act(s) and their victimizing - such as having committed the acts under duress or through coercion. Flexibility is intended to allow for circumstances where there is no literal "gun to the head" but rather elements of physiological control, a threat of violence, or other circumstance commonly known to underly human trafficking scenarios.

We have limited the list of offenses that are eligible as many other states have done. It was our intent to extend the covered titles to Title 48 and Title 50 as well and I believe some of our colleagues may also request additions so we would ask the committee to do so. We have crafted a standard which movants must meet in order to be eligible that is higher or equal to those of other states. We have retained judicial discretion in ruling even if that evidentiary bar is met. Thus, we see no likelihood of a rightfully convicted person being eligible for, let alone receiving relief. However, we are open to expanding the list of offenses which are exempted outright if any of our colleagues in the Government or Civil Society demonstrate necessity so long as we see no evidence that a victim may be forced to commit an offense submitted for addition. We have also heard from some, interest in removing these exemptions as well, given the standard. It is Courtney's House's position that we must especially protect against those rightfully convicted of violent crimes from being eligible for

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this process. We believe we have done this but welcome the committee's and other stakeholder's input in this.

#### ***Defining Violent***

Some states term their delineations between eligible and ineligible as exempting violent crimes but there is variance in hard the definition of such. In drafting, we did not find an appropriate definition for violent crime and thus crafted a new delineation in line with what is exempted in the Federal bill and some other states, cross-referenced with the crimes we know survivors are often forced to commit. Rather than creating a misnomer, we titled the delineation as "covered" and "non-covered" for clarity, though, as stated, similar lists have been designated as "violent crimes". Some states have created no carve-out, some only allow for a select crime or few crimes, and some carve out non-violent crimes with different interpretations of "violent". We welcome input in helping improve this definition so as to provide proper safeguards.

#### ***Court Discretion***

We have endeavored to provide guidance for how motions, and the following proceedings, under this process should operate. However, we should note that in no place do we limit the full discretion of the court to rule as it sees fit. In our experience working on these matters elsewhere, we have heard concern that establishing this type of procedure will see an influx of motions by individuals who claim to be victims but are factually not such. Generally, the fear has been focused toward endless and repetitive motions rather than nonvictims victims attaining relief. I must note that since the first statute of this type was passed in 2011, I know of no instance where this has been the case. In Maryland, a similar statute was passed and remained unused until the Women's Law Center rediscovered it and created a fellowship program to make use of it. The Governor of Maryland has recently granted funds to expand the pool of attorneys trained to handle these cases so that more can be filed. In New York, where the first law of this kind was passed, it was actually a judicial ruling that expanded their law even more.

However, we have in good faith drafted provisions to alleviate this fear should it arise. The text allows the Court to dismiss any motion it deems frivolous or offered in bad faith without a trial. Further, even if a movant can demonstrate by clear and convincing evidence that they were a victim of human trafficking and that the acts underlying their offense occurred as a direct result thereof, we have maintained the full discretion of the Court to rule as it sees fit. We have outlined evidence which could be sufficient to prove the necessary elements but have left discretion with the Court.

We have enjoyed great discussions with our civil society and government partners. Further, we have seen a readiness of the District to recognize the need to assist victims in this manner. We have endeavored to create a comprehensive process outlined in this bill

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with redundancies in place to protect from concerns we have heard in the past but not seen come to fruition. . I would be remiss if I didn't point out the asset we have had in our stakeholder community, members the Government here today, and practitioners outside of the District in helping us craft this bill. Repeatedly in legislation, Congress has called on states to pass and improve these types of provisions. Together with our stakeholder community and your expertise, I know that we will create a new standard to which others can look.

We look forward to working on this matter further and wholly thank the Council, and colleagues in civil society and government, for their assistance in helping survivors.

Thank You,

Nathaniel Erb  
Policy Counsel to Courtney's House

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**Hello and thank you for listening to my statement today.**

**I am a survivor of human trafficking and I was trafficked from the age of 12 to 22 on the streets of New York.**

**While I grew up being trafficked I was also arrested.**

**The trafficker who controlled me told me that I would be arrested and treated like a criminal-and I was.**

**But anyone who has been forced, tricked, or coerced into criminal activity should not be considered as having consented to that activity.**

**And therefore should not be considered a criminal.**

**I was arrested many many times taken to jail and Rikers Island Prison.**

**After surviving over a decade of violence and escaping from New York**

**I tried so very hard to rebuild my life, but living with multiple health issues such as cancer, as well as multiple criminal records made it very hard to do.**

**Carrying criminal convictions effected multiple areas of my life.**

**Even if those criminal records didn't effect applications for education, banking or housing they effected how others viewed me-as a criminal, and how I felt about myself.**

**Living my life as a productive citizen with multiple criminal records hanging over my head seemed beyond difficult and almost impossible.**



I told no one about my past because I'd been programmed by the trafficker to believe everything had been my choice, even though I'd been a 12 year old child when he began to exploit me.

Many people believe that criminal records and convictions that occurred when someone was a minor just somehow magically disappear, and I am here to tell you they do not.

When I finally found a stable job to support myself and my young 3 year old daughter, I soon lost that federal government job because of the criminal records that showed up when my fingerprints were taken.

Because of the many convictions and multiple aliases in my complex criminal records every kind of application from banking to housing became an awful traumatic experience of not knowing what might happen next, would I be able to open that checking account? Or get that apartment? How would those records effect my life that day?

Being pulled over for a minor traffic violation and having the police officer say-"We do not know who you are." was so scary.

Even though my drivers license was valid, and had my correct name and address, all of those criminal records showed up with multiple aliases, false birth dates and addresses.

In 2013 I was blessed to begin the process of vacating the criminal records and to begin living my life as a productive citizen.

One of the first things I did was to get my voters registration card and vote for the very first time.

Having criminal records vacated and the heavy stigma of being labeled a criminal erased was indescribable.

I was finally able to begin to feel that I wasn't a criminal and a bad person.

By vacating my convictions my ability to find work increased, thus reducing my vulnerabilities and my risk of being re-trafficked.

Allowing survivor's to vacate convictions reduces recidivism.

The day of my vacatuer hearing after facing the judge I turned to walk out of the courtroom, my attorneys on either side, with my entire body shaking and I felt lighter.

I cried tears of joy as I walked out of the Manhattan courtroom, the same building and the same floors I'd walked as a scared drug addicted child.

Today I am grateful I am alive and that I am able to somehow make a difference.

So I ask all of you to please consider this bill so that others can also lift the stigma of criminal records from their own lives and truly begin to live.

Thank you.

**Barbara Amaya, CDA, PhD**  
**571-577-3656**  
Author, Advocate, Survivor  
Trainer, Keynote, Speaker  
Award winning author of:

**Amazon Best Seller and  
Award Winning Memoir  
*Nobody's Girl***

***Contact me today let's make a difference together!***

**[www.barbaraamaya.com](http://www.barbaraamaya.com)**

## **JUDICIARY & PUBLIC SAFETY PUBLIC HEARING**

The Committee on the Judiciary & Public Safety will hold a Public Hearing on the following Legislation:

BILL 22-0170, THE "AT-RISK TENANT PROTECTION CLARIFYING AMENDMENT ACT OF 2017"

~~BILL 22-0329, THE "TRAFFICKING SURVIVORS RELIEF AMENDMENT ACT OF 2017"~~

BILL 22-0288, THE "HUMAN RIGHTS AMENDMENT ACT OF 2017" AND

PR 22-0357, THE "SENSE OF THE COUNCIL SUPPORTING PASSAGE OF THE EQUALITY ACT RESOLUTION OF 2017"

~~committee via email at: judiciary@dccouncil.us or at (202) 727-8275~~

Good morning Chairman Allen, Committee Members, Ladies and Gentlemen.

My name is Conchita Sarnoff, director of Alliance to Rescue Victims of Trafficking and professor at American University where I teach: Human Trafficking and Global Society to raise awareness of human trafficking. Since 2006, I have been an advocate on behalf of trafficked victims investigating, researching, and publishing a number of cases and articles. I am currently producing a documentary on a human trafficking federal case.

Thank you for your time and facilitating the necessary support and guidance in our efforts to move forward this important Bill, "Trafficking Survivors Relief Amendment Act of 2017." Without its existence, hundreds if not thousands of victims and at risk minors are compromised and unable to find gainful employment, shelter and more importantly, their dignity.

Today, I am speaking about only one case, but in reality, on behalf of hundreds if not thousands of at risk minors and survivors who have experienced the same trauma, arrests, addictions, and personal violations as this one victim and whose voices have also been silenced.

To further her case, the survivor's future, and her imminent well-being, I have attached several links and described the facts of the case in hope that you consider the passing of Bill 22-0329 the "Trafficking Survivors Relief Amendment Act of 2017," thank you.

In summary:

Jane Doe #1 and Jane Doe #2 filed a Complaint against the Government in the Southern District of Florida, in 2008, alleging a violation of their rights under the Crime Victims' Rights Act (CVRA). 18 USC 3371. DE1

<https://www.scribd.com/document/251520789/Jane-Doe-1-and-Jane-Doe-2-v-U-S>

Jane Doe #1 and Jane Doe #2 were both minor females (under the age of 16) at the time the crimes were perpetrated. They were trafficked by convicted pedophile and registered level 3 sex offender, Mr. Jeffrey E. Epstein.

Jane Doe #1 is now 29 years old.

Jane Doe #1 alleged that "Jeffrey Epstein trafficked her for sex. After the incident with Mr. Epstein, Jane Doe's life went spiraling downward. In direct correlation to the trauma Ms. Doe became addicted to drugs for many years, abused and as a result committed petty crimes. As a result of her addiction, she was arrested twice in Florida. Once for possession of and the second time for possession while under parole.

Jane Doe #1 is currently serving time in a Florida prison. Because of her sentence and time in prison, she was not allowed to attend and testify at a court hearing last year on behalf of another victim who also filed a complaint against Mr. Epstein for the same sex trafficking violations.

Jane Doe #1's case relates to this particular Bill in that if and when Jane Doe's time is served, her ability to gain employment will be adversely affected if and when she decides to leave the State of Florida and move to Washington DC.

Perhaps she will not leave the State of Florida or relocate to DC. However, her gainful employment opportunities in Florida given the current statutes are slim. If she is left with no other recourse or access to gainful employment Jane Doe #1, at the age of 30, and when her time is served, might very well return to a life of crime, on the streets and drug abuse. Without an opportunity to be gainfully employed, the physical, mental and emotional survival of a trafficked victim is minimal. It is a vicious cycle with no end in sight unless the victim falls in line with a faith based program.

<https://www.leagle.com/decision/infeco20081003c04>

As the nature of this case is so unusual and has been speculated about, since 2011, by so many reporters and mainstream media; and given the alleged abusers implicated in the case, including a couple of high-level government officials, businessmen, academicians and a Harvard University law professor with a vast influence over our system of justice and international reputation, it calls for special attention and a thorough examination of the Trafficking Survivors Relief Amendment Act.

<https://www.leagle.com/decision/infeco20090812764>

Excerpt from Court Filing:

"As the Court is aware, more than six years ago, Jane Doe #1 filed She alleged that Jeffrey Epstein had sexually abused her and that the United States had entered into a secret non-prosecution agreement (NPA) regarding those crimes in violation of her rights. At the first court hearing on the case, the Court allowed Jane Doe #2 to also join the action. Both Jane Doe #1 and Jane Doe #2 specifically argued that the government had failed to protect their CVRA rights (inter alia) to confer, to reasonable notice, and to be treated with fairness. In response, the Government argued that the CVRA rights did not apply to Jane Doe #1 and Jane Doe #2 because no federal charges had ever been filed against Jeffrey Epstein. The Court has firmly rejected the United States' position. In a detailed ruling, the Court concluded that the CVRA extended rights to Jane Doe #1 and Jane Doe #2 even though federal charges were never filed. DE 189. The Court explained that because the NPA barred prosecution of crimes committed against them by Epstein, they had "standing" to assert violations of the CVRA rights." Id.

The Court deferred ruling on whether the two victims would be entitled to relief, pending development of a fuller evidentiary record. Id"

Thank you very much for your time and giving me the opportunity to speak.

Conchita Sarnoff  
Executive Director  
Alliance to Rescue Victims of Trafficking  
Atrvt.org  
[Carnoff@atrvt.org](mailto:Carnoff@atrvt.org)  
Tel: 202 .355. 3858



**Testimony of Toni McIntosh Harper,  
on behalf of the Federal City Alumnae Chapter, Delta Sigma Theta Sorority Inc.**

**Testimony in Favor of B22-0329, the "Trafficking Survivors Relief  
Amendment Act of 2017"**

Greetings Councilmember Allen and other distinguished councilmembers. My name is Toni McIntosh Harper and I am testifying on behalf of the over 400 members of the Federal City Alumnae Chapter of Delta Sigma Theta Sorority, Inc. Federal City is one of two Delta chapters chartered and located within Washington DC. Members of both chapters meet with the Mayor and members of the Council throughout the year and we regularly vote in all elections. We are in favor of the passage of the bill to establish and authorize legal processes by which victims of human trafficking may petition a court to vacate certain convictions or expunge certain legal records, if the offense was committed as a result of being a victim of human trafficking.

Delta Sigma Theta, founded in 1913, is an organization of predominantly Black, college-educated women devoted to uplifting our community and the rights of women. Since March 2003, Delta has been a non-Government (NGO) member of the United Nations, using this status to monitor and implement agreements that impact women and children around the world. Also, Federal City is a supporter of citywide legislation, which embraces the principles of the UN Convention on the Elimination of all forms of Discrimination Against Women. (CEDAW).<sup>i</sup> As such, we felt that it was important to have our voices heard on this matter.

The International Labor Organization estimates that over 20.9 million people are victims of human trafficking worldwide, impacting men, and disproportionately women and children.<sup>ii</sup> These victims are often forced to perform free labor and unfortunately commercial sex acts. They are sometimes, although not always, transported away from their homes and families, forced to rely on their captors for food and "security," and threatened with physical harm if they

get caught. They are taught to lie to law enforcement authorities to protect their captor at their own peril.

Making matters worse, a trafficked person whose only encounters with law enforcement are often under the trauma of an arrest, making it less likely for that individual to trust law enforcement authorities. The very system that is supposed to protect them is further compounding their problems. Even if they escape their situation, it is difficult to escape the stigma of an arrest. Once a person is "in the criminal justice system," it is difficult to live a "normal" life.

Passage of B22-0329 would give victims an opportunity to at least try and recover from the trauma of being trafficked. The ability to vacate a conviction or expunge an arrest record affords people the opportunity to apply for jobs without "checking the box" or find homes without possibly having to register as sex offenders.

Consider the story of Ashley Cacho, whose mother died when Ashley was only 9 years old. By the age of 11, her "adult friend" had convinced her to become a prostitute. By age 16, Ashley was arrested and in the criminal justice system.<sup>iii</sup> Or the story of Tynisha who at the age of 13, started "dating" a 27 year-old man who later became her pimp. Tynisha was transported from New York to Atlantic City where for 3 years, she was beaten and threatened with death for disobeying her pimp.<sup>iv</sup> Or the story of Amora, who was a sex slave for 10 years because her father sold her to a drug dealer in return for crack. Amora was traded to another pimp, and had been tied to a bed and drugged. Amora tried to escape but was caught and stabbed by her pimp. There are countless other stories in the news. While the names may have been changed, their stories are very real.

These incidents are too numerous. The problem seems too big. But as a civilized society, we must not further victimize these women and children who have been treated and traded like commodities.

We sincerely hope that the Council will not only pass this legislation but continue to fund services that help law enforcement and others identify the victims of trafficking, and provide training for how to treat them humanely.

This concludes my testimony and thank you for your time.

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<sup>i</sup> <http://www.unanca.org/news-events/news/849-una-ncas-cities-for-cedaw-initiative>

<sup>ii</sup> <https://humantraffickinghotline.org/what-human-trafficking/human-trafficking/victims>

<sup>iii</sup> <http://www.wusa9.com/news/local/dc/dc-human-trafficking-victim-shares-her-story/385513340>

<sup>iv</sup> <http://www.washingtontimes.com/news/2011/apr/25/sex-trafficking-survivors/>

# Cast

COALITION TO  
ABOLISH SLAVERY  
& TRAFFICKING

September 18, 2017

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**BILL NUMBER: B22-0329**

**TITLE: "Trafficking Survivors Relief Act of 2017"**

**COMMITTEE: Judiciary**

**HEARING DATE: September 21, 2017**

**POSITION: SUPPORT**

Dear Chairman Allen and Honorable Judiciary Committee Members

The Coalition to Abolish Slavery & Trafficking (CAST) is writing to urge your support of The Trafficking Survivors Relief Act of 2017 (B22-0329). This bill would ensure that victims of modern slavery are able to seek recourse in court to seal and vacate criminal convictions their traffickers forced them to commit.

Founded in 1998 in Los Angeles, California, CAST was one of the first organizations in the United States to provide comprehensive social and legal services for survivors of human trafficking. Additionally, CAST opened the first shelter in the country exclusively dedicated to providing physically and psychologically safe housing for survivors. CAST serves male, female, and child victims of trafficking. CAST clients come from almost every region of the world including Asia, Latin America, Eastern Europe, Africa and the United States. To date, CAST has provided services to over 1,500 survivors and their family members, as well as thousands of hours of technical consultation to organizations working on this issue across the country and internationally. Our experience providing legal and social services to survivors gives us critical information about the real-life experiences of trafficking victims.

What our experience has shown is that because of the nature of this crime, many trafficking victims will lie about their present circumstances and experience because of threats from their trafficker. Also they may not self-identify as victims and feel bonded to their trafficker/abuser. This often leads to their arrest and criminal convictions for crimes their traffickers forced them to commit.

The arrests and criminal records for trafficking victims therefore becomes one of the largest barriers to recovery as survivors engage in CAST wrap around services and seek to begin their lives again. Their arrests and convictions create barriers to housing, school, jobs and other benefits which means that survivors are vulnerable to re-exploitation or trafficking.

Given the long-term barriers our clients experienced because of arrest and criminal conviction, last year CAST was integral in helping to pass SB 823, Criminal procedure: human trafficking in California. This measure allows human trafficking victims to seal criminal arrest records and vacate all convictions for non-violent crimes trafficking victims were forced to commit by their traffickers.

Additional special provisions in this bill include:

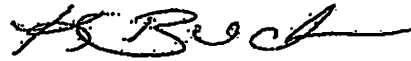
- Allows trafficking survivors to consolidate hearings for these petitions in one CA criminal court, as long as the prosecuting law enforcement agency and the court consents to this jurisdiction;
- Allows certain evidence to be admissible as non-hearsay;
- If uncontested allows a judge to grant the motion without a hearing;
- Allows human trafficking survivors to appear telephonically or by other means if necessary; and
- Importantly seals both criminal arrest records and convictions.

This law became effective on January 1, of this year. To date CAST has successfully sealed 10 separate arrests records and convictions. We currently have 70 clients still awaiting this legal relief. In CAST's experience, this type of law is a fair system to allow trafficking victims to have their chance to petition the court for relief and let the court decide if they deserve this special consideration. It has not lead to fraudulent claims for relief or a flooding of the court system. It has allowed as one CAST client so aptly stated: "criminal bonds of arrest and conviction to be removed so that now I am fully free!"

Our current system has failed to appropriately identify and serve trafficking victims. In fact the very nature of the crime means that most victims will not self-identify and often will believe they are complicit in the crimes committed against them. For these reasons CAST strongly asks you to support The Trafficking Survivors Relief Act of 2017 to allow trafficking victims to clear their criminal records and fully move forward in their recovery.

If you have any questions concerning this matter please feel free to contact CAST at 213-365-1906

Sincerely,

A handwritten signature in black ink, appearing to read "Kay Buck", with a stylized flourish at the end.

**Kay Buck**  
**Executive Director**

# rights4girls

**To:** Chairman Charles Allen, Council of the District of Columbia Committee on the Judiciary & Public Safety

**From:** Yasmin Vafa and Maheen Kaleem

**Re:** Rights4Girls' Comments on B22-0329, "Trafficking Survivors Relief Amendment Act of 2017"

**Date:** October 5, 2017

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Rights4Girls is a human rights organization working to end sex trafficking and gender-based violence in the U.S. Based in Washington, D.C., we advocate for the dignity and personhood of young women and girls at the federal, state, and local levels, and engage in coalition-building, public awareness campaigns, and training and technical assistance. Over the past several years, we have been actively involved in the passage of multiple federal bills aimed at strengthening jurisdictions and reforming systems to effectively identify and respond to victims of domestic child sex trafficking. These bills include the 2013 reauthorizations of the *Violence Against Women Act*<sup>1</sup> and the *Trafficking Victims Protection Act*,<sup>2</sup> the *Preventing Sex Trafficking and Strengthening Families Act of 2014*,<sup>3</sup> and the *Justice for Victims of Trafficking Act of 2015*.<sup>4</sup>

In 2015, Rights4Girls partnered with a survivor of child sex trafficking to launch the No Such Thing [as a child prostitute] campaign, aimed at eliminating the term "child prostitute" in the media and in law. As a result of our campaign, media outlets such as the Associated Press and CNN have stopped using the term "child prostitute" and other variations of the phrase, and now accurately refer to victims as survivors of child sex trafficking. We have also worked with advocates in a number of states to leverage the campaign messaging to pass laws that protect child survivors from unjust criminalization and reduce barriers to healing. In collaboration with the Department of Justice's Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the National Council of Juvenile and Family Court Judges (NCJFCJ), we created and currently coordinate an intensive judicial institute on domestic child sex trafficking to train juvenile, family, and tribal court judges on how to identify child sex trafficking victims in their courtrooms and improve their response towards trafficked youth. Through that partnership, we are currently providing technical assistance to a number of agencies and providers in D.C. regarding their response to child sex trafficking. We are also members of the Youth Justice Project coalition, the D.C. Girls Coalition, the D.C. Coalition to End Sexual Violence, and the Advisory Board of the Washington Area Women's Foundation's recently launched Young Women's Initiative.

Today, we submit this testimony in support of legislation that reduces the barriers that arise from unjust criminalization of survivors of sex trafficking. However, we urge the Council

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<sup>1</sup> Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4 (Mar. 7, 2013).

<sup>2</sup> Trafficking Victims Protection Reauthorization Act of 2013, H.R. 898 (Mar. 19, 2013).

<sup>3</sup> Preventing Sex Trafficking and Strengthening Families Act of 2014, Pub. L. 113-183 (Sept. 29, 2014).

<sup>4</sup> Justice for Victims of Trafficking Act of 2015, Pub. L. 114-22 (May 29, 2015).

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to consider amending B22-0329, the “Trafficking Survivors Relief Amendment Act of 2017,” to avoid unintended consequences that put child victims at increased risk for re-traumatization, thereby, protecting *all* survivors of child sex trafficking.

1. **The crimes of child abduction (D.C. Code 22-2704) and cruelty to children (D.C. Code 22-1101) should be moved to the list of non-covered offenses.**

Rights4Girls was involved in the crafting of federal vacatur legislation that has been discussed in Congress for the past five years and, consequently, we have researched and talked with advocates around the country who have passed similar legislation in their states. The underlying rationale for passing vacatur legislation is to allow trafficking survivors to clear criminal records and arrests for crimes commonly associated with being in the sex trade.<sup>5</sup> These crimes include prostitution and prostitution-related offenses (e.g., loitering and trespass) and low-level, non-violent drug offenses. This legislation offers a recognition that survivors of trafficking are quite frequently forced to commit these crimes under duress, and that criminal records render survivors even more vulnerable to marginalization and prevents their ability to escape their exploitation.

The effect of this legislation should not be to create blanket protection for people who commit violence against others. Among the national community of survivor advocates, the topic of offering vacatur protections to survivors who commit violent crimes against other survivors is an emerging and contentious issue which has yet to reach any resolution. This is the reason that the federal bill and many states exclude violent crimes and all crimes against children from vacatur protections.<sup>6</sup> New York, a state leader on this issue, has been able to provide post-conviction relief for hundreds of trafficking survivors with a bill that limits vacatur to prostitution and prostitution-related offenses.<sup>7</sup> There, survivors charged with non-prostitution related crimes rely on the broader expungement protections available to a much wider group of individuals.

Our concern is rooted in protecting the interest of justice for child survivors who may be the victims of these violent crimes. Put simply, if a child survivor was brutally and violently victimized by another survivor, that child victim has the right not to have the violence they experienced erased from public record. That child also has the right not to be subpoenaed to

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<sup>5</sup> JESSICA EMERSON, ET AL. OBTAINING POST-CONVICTION RELIEF FOR TRAFFICKING SURVIVORS, available at [https://www.americanbar.org/content/dam/aba/directories/pro\\_bono\\_clearinghouse/ejc\\_2014\\_182.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/directories/pro_bono_clearinghouse/ejc_2014_182.authcheckdam.pdf); HUMAN TRAFFICKING AND THE STATE COURTS COLLABORATIVE, CENTER FOR PUBLIC POLICY ALTERNATIVES, & STATE JUSTICE INSTITUTE, POST-CONVICTION RELIEF FOR HUMAN TRAFFICKING VICTIMS CONVICTED OF CRIMES COERCED BY A TRAFFICKER (2015), available at [http://www.htcourts.org/wp-content/uploads/150904\\_PostConviction\\_Relief\\_forHTvictims\\_v05.pdf](http://www.htcourts.org/wp-content/uploads/150904_PostConviction_Relief_forHTvictims_v05.pdf).

<sup>6</sup> See Trafficking Survivors Relief Act of 2017, H.R. 459, 115th Cong. (2017); see also Assemb. B. 1762, 2015-16 Leg., Reg. Sess. (Cal. 2016); FLA. CRIM. P. 943.0583.

<sup>7</sup> See N.Y. CRIM. P. 440.10; see also JESSICA EMERSON, ET AL. OBTAINING POST-CONVICTION RELIEF FOR TRAFFICKING SURVIVORS, available at [https://www.americanbar.org/content/dam/aba/directories/pro\\_bono\\_clearinghouse/ejc\\_2014\\_182.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/directories/pro_bono_clearinghouse/ejc_2014_182.authcheckdam.pdf).



# rights4girls

testify and endure litigation about the specifics of their trafficking situation that could be extraordinarily re-traumatizing, even if a court does not ultimately grant vacatur. For these reasons, many survivors are adamant against extending vacatur protections to violent crimes where the victim is a child because the rights of the child victim must still be protected, and often the violence committed is so horrendous that they do not believe vacatur is the appropriate way to deal with those situations. Furthermore, vacating convictions for violent crimes opens the door for individuals who harmed children to work with children and other vulnerable groups in D.C. Due to the erasure of these crimes from the public record, parents, caregivers, and other stakeholders will be without pertinent information needed to make informed decisions about who gets to interact with and care for their children, creating the possibility that other children will be harmed.

As currently written, the bill appropriately excludes most acts of child abuse from vacatur protections, but still allows for these crimes to be expunged if certain conditions are met. We urge the Council to follow this same logic and add both cruelty to children (D.C. code 22-1101) and child abduction (D.C. Code 22-2704) to the list of non-covered offenses.

## **2. Vacatur and expungement are not the only ways to protect survivors from unjust criminalization**

As advocates who work at the intersection of racial justice, juvenile justice reform, and violence against women, we encourage the Council to pass broader reforms that prevent survivors from ever being convicted of these crimes in the first place. We support the Council's consideration of efforts to expand expungement and sealing protections for all individuals arrested and charged with crimes in D.C., as well as future consideration of affirmative defense statutes that reduce the likelihood that trafficking survivors can be convicted of crimes they committed under the duress of a trafficker. When survivors are charged with crimes beyond prostitution and non-violent prostitution-related offenses, we worry that an overbroad vacatur statute may inadvertently create a hierarchy of victimization, whereby trafficking survivors who commit violent offenses are offered more expansive protections than survivors of other severe forms of victimization who may also commit those crimes. We see those circumstances as part of a broader criminal justice reform effort, and defer to the expertise of our colleagues on the bench, at the Public Defender Service, and at the Office of the Attorney General.

We look forward to continuing to work with Chairman Allen and the committee to develop intentional, thoughtful legislation that balances the interests of justice for all victims of crime, including sex trafficking. Should members of the committee have any questions regarding this testimony, please contact Yasmin Vafa, Executive Director, Rights4Girls at [yasmin@rights4girls.org](mailto:yasmin@rights4girls.org) or (202) 821-1625.

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
OFFICE OF VICTIM SERVICES AND JUSTICE GRANTS



Hearing on Bill 22-329, the "Trafficking Survivors Relief Amendment Act of  
2017"

Testimony of  
Michelle M. Garcia  
Director

Before the  
Committee on the Judiciary and Public Safety  
Council of the District of Columbia  
The Honorable Charles Allen, Chairperson

John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, DC 20004

September 21, 2017



Good morning Chairperson Allen, members, and staff of the Committee on the Judiciary and Public Safety. I am Michelle M. Garcia, the Director of the Office of Victim Services and Justice Grants (OVSJG). I am here to provide the Executive's testimony on Bill 22-329, the "Trafficking Survivors Relief Amendment Act of 2017." Mayor Muriel Bowser is committed to reducing the harm experienced by, and improving outcomes for, victims of human trafficking. This bill aligns with Mayor Bowser's proposal to reform the criminal record sealing process by making it more progressive and fair. The bill seeks to improve outcomes for trafficking victims by providing the opportunity to further rebuild their lives and access resources, supports, and programs that they are currently barred from due to a criminal history, even if that criminal record is the direct result of being a trafficking victim.

As noted in President Obama's Proclamation of National Slavery and Human Trafficking Prevention Month this past January, these cases are a violation of human decency that tear at our social fabric. Due to the nature of the crime, it is difficult for us to quantify the scope of the problem in the District. In 2016, the National Human Trafficking Hotline received nearly 27,000 calls and over 7,500 human trafficking cases were reported nationwide. In FY2016, OVSJG funded nonprofit organizations that provided services to more than 1,100 victims/survivors of human trafficking in the District. We know this is not the full picture. It is not unusual for victims to access services, but never identify as a victim of trafficking out of fear, shame, or simply not knowing their situation meets the definition of trafficking.

Trafficking cases involve the use of force, threats of force, fraud, and other forms of coercion to compel labor or services, including commercial sex acts, from victims. In many cases, victims are compelled or forced to engage in criminal activity by the trafficker(s) as another method to maintain and reinforce control over the victims. The International Association of Chiefs of Police advises that law enforcement "be aware that traffickers might not be easy to distinguish from victims and understand that some victims may have had to



'collaborate' in order to survive."<sup>1</sup> Frequently, they are not identified as victims when they are arrested, detained, prosecuted, convicted, and/or plead guilty to these crimes.

Even when a victim manages to break free from a trafficker, the consequences of that victimization, both in terms of their trauma and any arrests or convictions, may follow them for the rest of their lives. The District has a robust response to trafficking. Under Mayor Bowser, the District has partnered with the U.S. Department of Homeland Security's Anti-Trafficking Blue Campaign to increase public awareness and the ability to identify and report suspected trafficking. As I noted, OVSJG funds community-based organizations that provide a wide range of services to trafficking victims/survivors, including crisis intervention, safety planning, advocacy, case management, civil and criminal legal services, counseling, and housing. Since 2004, the DC Human Trafficking Task Force—a multidisciplinary collaboration of law enforcement agencies and non-governmental organizations—has worked to increase the prosecution of traffickers, while identifying and serving the victims of this horrific crime. The D.C. Superior Court recently launched HOPE Court, a pilot project that represents the Court's effort to address commercial sexual exploitation of children in a manner that is sensitive to the needs of child victims of sexual exploitation, including sex trafficking.

While all of these efforts are critical, arrests or convictions for criminal activity that occurred while the person was a victim of trafficking can often pose an insurmountable barrier for victims. A criminal record can prevent survivors from getting a job, furthering their education, receiving housing assistance, applying for a loan, or obtaining immigration relief. These are just a few of the hundreds of collateral consequences that attach to criminal justice involved individuals under federal and District law.

This bill follows in the steps of over 30 states that have enacted measures to seal, expunge, or vacate arrest and conviction records of human trafficking victims. We support efforts to reduce the myriad of challenges faced by trafficking victims/survivors due to prior arrests or convictions, while ensuring continued safety for the victim and the public.

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<sup>1</sup> *The Crime of Human Trafficking: A Law Enforcement Guide to Identification and Investigation*. International Association of Chiefs of Police. Alexandria, VA. <http://www.theiacp.org/portals/0/pdfs/CompleteHTGuide.pdf>



We concur with the crimes delineated as “non-covered offenses,” as they represent serious offenses. For other dangerous crimes and crimes of violence, as defined by D.C. Official Code § 23-1331, we support expungement and vacatur with the modification that law enforcement would still have access to the records. Essentially, creating a process whereby the records would be sealed for law enforcement purposes and access, and expunged/vacated for all other purposes (*e.g.*, housing, employment, loans, etc.). For all other crimes (*i.e.*, those not defined as a “noncovered” offense, dangerous crime, or crime of violence), we support expungement/vacatur without modification.

We appreciate the Council’s efforts to meet the needs of victims/survivors of human trafficking. We look forward to working with the Committee to resolve the policy concerns raised today. I am happy to answer any questions you may have.





**Statement of Mina Q. Malik  
Deputy Attorney General for the Public Safety Division  
Office of Attorney General for the District of Columbia**

**Before the**

**Committee on the Judiciary and Public Safety  
The Honorable Charles Allen, Chairperson**

**Public Hearing**

**Bill 22-329, the "Trafficking Survivors Relief Amendment Act of 2017"**

**September 21, 2017  
9:30 am  
Room 120  
John A. Wilson Building  
1350 Pennsylvania Avenue, NW  
Washington, District of Columbia 20004**

Greetings Chairman Allen, Councilmembers, staff, and residents. I am Mina Q. Malik, and I have the privilege of serving as the Deputy Attorney General for the Public Safety Division of the Office of the Attorney General (hereinafter "OAG"). I am pleased to appear on behalf of Attorney General Karl A. Racine to testify in favor of the goals and objectives found in Bill 22-329, the "Trafficking Survivors Relief Amendment Act of 2017." I want to begin by thanking the Committee on the Judiciary and Public Safety (hereinafter "the Committee") for holding this important hearing, and I look forward to working with you and the advocates throughout the legislative process.

Since coming into office, Attorney General Racine made combating human trafficking a top priority of OAG, and efforts to combat this problem span across divisions within our office. OAG's role in the Citywide Human Trafficking Task Force has been helpful in raising awareness, providing training opportunities, and expanding the coalition of efforts in the city to stop trafficking. OAG is also a member of the Superior Court's Committee on Human Trafficking. This crucial committee functions to bring child welfare and juvenile justice stakeholders together to develop ways to collaborate and communicate when youth are involved in trafficking and involved with both systems.

Attorney General Racine is pleased to partner with the Court and District agencies on establishing HOPE court, a human trafficking specialty court that is still in the developmental stages. The goal of HOPE court is to provide victims of human trafficking the advocacy and services they need as they navigate through the justice system. In addition, OAG conducts

outreach to schools and in the community on the signs and dangers of human trafficking, and develops training for employees in our hotel, nightlife, and for-hire vehicle industry.

The work OAG does with respect to human trafficking is what informs the Attorney General's support for Bill 22-329. The laudable purpose of this legislation is to permit a judge to seal arrests and vacate convictions for certain offenses, when the judges, in their discretion, determine that a person, who as a direct result of being trafficked, was forced to commit the acts that served as the basis of the conviction. A human trafficking victim would now have an opportunity to raise the affirmative defenses of coercion and/or duress when she, as a result of her victimization, was sentenced for an offense after she failed to raise these affirmative defenses at trial or failed to raise them prior to a plea.

This should not be viewed as a blanket opportunity for a defendant to have her conviction set aside in situations where a person who was a human trafficking victim was arrested for or convicted of an offense that was unrelated to being trafficked. Nor should it be an opportunity to have a second bite at the apple to have the conviction set aside by a judge under the lower post-conviction provisions outlined in the bill, despite raising the defense(s) and being convicted beyond a reasonable doubt.

While the Attorney General supports the goals of this legislation, I must note that OAG is concerned that the bill as currently drafted is overly broad and may have the unintended consequence of limiting the use of important investigative information by law enforcement and prosecutors. To this point, OAG was grateful to have met with advocacy groups that



championed the introduction of this legislation. We discussed our concerns and I am pleased to report that the advocacy groups with whom we met understand the concerns raised and seek the same outcomes with respect to this legislation. A few concerns we discussed included the following:

- The legislation would allow a conviction to be set aside if the conduct of "*the person [that] resulted in the conviction was the direct result of the person having been a victim of trafficking.*" [emphasis added.] The bill, however, does not define "direct result." OAG strongly recommends that we work with the Committee on a definition of "direct result" to give the Court guidance on how to determine this important factor;
- There is no time limitation for filing a motion to vacate after a conviction has been obtained. As the Council recognized when it passed the Criminal Record Sealing Act of 2006, the longer the time frame between a conviction and a motion to seal is filed, the less likely it is that the government will have the information or the witnesses necessary to legitimately rebut the motion;
- If the conviction is set aside pursuant to this legislation, an expungement order directs that all references to the arrest of the person for the covered offense be expunged. The bill does not, however, explicitly state who may access and see the expunged records. Under current law, when an arrest or conviction is sealed under grounds of actual innocence, D.C. Official Code § 16-802 severely limits who may access and see sealed law enforcement, prosecution, and other records. In addition, when the court seals a

record under D.C. Official Code § 16-803, the records must be sealed from all public view, but may be viewed by law enforcement and prosecutors. Here, the Council acknowledged that information in those records may aid future investigations. OAG strongly recommends that the information concerning the expungement of an arrest or a vacated conviction be available only for use by law enforcement. While record of the expungement should not be available to the public, such information may aid law enforcement in future investigations of cases that involve similar fact patterns as the sealed or vacated human trafficking-related offense.

I greatly appreciate the opportunity to testify in support of Bill 22-329. OAG stands ready to work with the Committee, our public safety partners, and community stakeholders to ensure the "Trafficking Survivors Relief Amendment Act of 2017" achieves the outcomes desired by all interested parties. Our staff and I are happy to answer any questions that members may have.

THE  
PUBLIC  
DEFENDER  
SERVICE  
*for the District of Columbia*



COMMENTS OF THE PUBLIC DEFENDER SERVICE  
FOR THE DISTRICT OF COLUMBIA

concerning

TRAFFICKING SURVIVORS RELIEF AMENDMENT ACT OF 2017  
Bill 22-0329

Presented by

Katerina Semyonova  
Special Counsel to the Director on Policy and Legislation

before

COMMITTEE ON THE JUDICIARY AND PUBLIC SAFETY  
COUNCIL OF THE DISTRICT OF COLUMBIA

Chairman Charles Allen

September 21, 2017

Avis E. Buchanan, Director  
Public Defender Service  
633 Indiana Avenue, N.W.  
Washington, D.C. 20004  
(202) 628-1200

Thank you for the opportunity to testify on Bill 22-0329, the Trafficking Survivors Relief Amendment Act of 2017. I am Katerina Semyonova, Special Counsel to the Director for Policy and Legislation at the Public Defender Service for the District of Columbia. PDS supports the ideas advanced in this bill, but believes that the time has come to create a broad and easy-to-use system for sealing criminal records related to both non-convictions and convictions.

PDS understands the importance of creating a process for sealing the criminal records of persons who were victims of trafficking. The presence of a criminal record, even a record of a non-conviction which documents nothing more than an accusation made by police and the prosecuting authority, hampers individuals in their pursuit of employment, education, professional licenses, and housing. The existence of a record creates at times an insurmountable barrier to reentry and causes shame and embarrassment.

Bill 22-0329 is a good start in assisting victims of trafficking with sealing their records but the bill's passage would provide only a partial and incomplete improvement on the current sealing process. The most notable improvement over the District's current record sealing statutory scheme is that the bill allows an individual to move to vacate an unlimited number of convictions, for a number of different offenses, if the judge finds that the underlying conduct was the "direct result" of the trafficking. The District's current statutory scheme only allows a person to seal one conviction and very few offenses are eligible for such sealing.<sup>1</sup>

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<sup>1</sup> Only "eligible misdemeanor" and "eligible felony" convictions are eligible for sealing, *see* D.C. Code § 16-803(c), and because of the definition of "disqualifying arrest or conviction," only one conviction can be sealed. *See* D.C. Code § 16-801(5)(A) and § 16-803(c)(2). "Eligible misdemeanor" is defined at D.C. Code § 16-801(7). The only felony that is eligible for conviction-sealing is the offense of "failure to appear." *See* D.C. Code § 16-801(6).

It is also an improvement that Bill 22-0329 creates a possibility of expungement for non-convictions without any waiting periods, beyond those associated with the judicial process.<sup>2</sup> But there are drawbacks to Bill 22-0329 as well. If the prosecutor objects to the trafficking victim's motion to seal, the victim must wait for a hearing and then, in open court, must recount what are likely to be painful and intensely personal and private experiences. The victim will be creating a court record of his or her trafficking experience where none may have previously existed – a record that will not be sealed if the motion to seal is denied. And the victim will be put in a position of having his or her experience judged; in ruling on the motion, the court will have to decide if the victim's criminal conduct was the "direct result" of trafficking, which necessarily involves a judgment of whether the victim was trafficked at all. Beyond any legal consequences of a court ruling that the person is not a trafficking victim (or that his or her criminal conduct was not the result of being a victim of trafficking), there is the trauma of having one's lived experience denied or considered insufficiently "victimizing."

While some of those concerns can be fixed in the context of the bill – for example, by requiring that all motions and related pleadings be placed under seal and the hearing be closed – some of the concerns are inherent in the effort to provide relief to group of people who must prove themselves eligible to be considered in that group. Still, there is no question that, even with the drawbacks, Bill 22-0239 is much better than the little the District offers now and PDS would support its passage. But PDS thinks there is a better way. PDS asserts that all individuals, including victims of trafficking, who were accused but not convicted of crimes in the District of

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<sup>2</sup> Pursuant to D.C. Code § 16-803(a)-(b), a person must wait at least two years prior to moving to seal an eligible misdemeanor, at least three years prior to moving to seal an offense that is not an eligible misdemeanor if the case was terminated prior to charging by the prosecution, and at least four years prior to moving to seal if the case was not an eligible misdemeanor and the case was terminated after charging by the prosecution.

Columbia should have records of the non-conviction sealed or expunged in an expeditious process that does not place unnecessary burdens on the movant. The Council should codify a process for sealing non-convictions that recognizes, above all else, that the allegations were never proved beyond a reasonable doubt. Records of non-convictions represent only accusations and yet they have an outsized prejudicial impact in all spheres of public life. These accusations should be removed as quickly as possible, with as few requirements as possible, from all individuals' records regardless of whether they can prove, potentially years after the alleged conduct, that they were victims of trafficking and that the alleged conduct was the direct result of trafficking. And after generally improving the District's records sealing scheme, where the sealing needs of the victims of trafficking have still not been met, the Council should fill those gaps with a rewritten Bill 22-0329.

There are other issues with the drafting of Bill 22-0329 which the Committee should address if the bill continues as a stand-alone effort to address records sealing for victims of trafficking. For example, the structure of the scheme proposed in the bill depends on the definition of "covered offenses" and "non-covered offenses." However, the definition of "covered offenses" references only offenses in Title 22 of the D.C. Code; fails to include many weapons offenses, which are in Title 7, and drug offenses, which are in Title 48. Thus as introduced, the bill fails to allow a trafficking victim to move to vacate or seal records of offenses which could frequently arise in the context of trafficked individuals who could be forced by a trafficker to hold weapons or drugs or who may be swept up in the law of joint constructive possession for contraband possessed by a trafficker.

With regard to convictions, Bill 22-0329 offers an expungement scheme that is based on the seriousness of the offense and that allows for vacating a conviction if the conviction is for a

covered offense and the individual can show that he or she was the victim of trafficking and that the conviction was the direct result of trafficking. As noted above, this is certainly a step forward from the current record sealing system for convictions. However, this record sealing scheme creates the anomaly that an individual would be eligible to immediately vacate a conviction for a covered offense, but the individual cannot raise as a defense at trial the fact that the underlying criminal conduct was the direct result of being trafficked. Rather than clean up the conviction on the back end, the Council should consider codifying a defense so the conviction does not occur in the first place. If the Council hopes to avoid some future convictions for victims of trafficking in addition to providing a mechanism for vacating convictions, the bill should also be expanded to provide such a defense in future prosecutions for trafficking victims.

Finally, it is PDS's view that all individuals convicted of offenses, including those whose convictions were the direct result of trafficking, deserve a path to the full restoration of their civil status in the community. The District should have a comprehensive sealing law that recognizes that individuals are capable of rehabilitation upon the successful completion of their sentences of incarceration or probation. The law should also recognize that a broad range of hardships and circumstances lead people, including the victims of trafficking, sometimes before they are trafficked, to commit offenses and that individuals regularly overcome those terrible hardships to become valued members of the community. The law should place such individuals in the best position for successful and complete reentry to the community by removing the barriers that criminal convictions present in housing, employment, and education. In PDS's view, the Council should go farther than Bill 22-0329 by expanding record sealing of convictions for more individuals than just those who can prove that they were victims of trafficking. But PDS also thinks that even if the Council continues to focus efforts to give more record sealing relief to this

particularly vulnerable group, Bill 22-0329 still sets the burden too high and is overly restrictive on the convictions that would be eligible for the benefits of the bill.

Rather than taking a piecemeal approach to record sealing, as the Council has done in the past through bills aimed at creating a mechanism to apply for record sealing based on innocence, or in fugitive cases, or after extensive waiting periods, PDS is asking the Council to enact a fair and reasonable record sealing law that permits all individuals to eventually seal records of criminal convictions and non-convictions. We are particularly encouraged by the legislation already introduced by Councilmember Grosso and by the Mayor's announced intention to introduce legislation and hope this Committee will take up those bills and the opportunity for comprehensive sealing reform those bills will present.



**ATTACHMENT E**

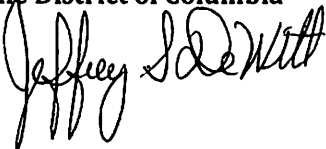
Government of the District of Columbia  
Office of the Chief Financial Officer



Jeffrey S. DeWitt  
Chief Financial Officer

**MEMORANDUM**

**TO:** The Honorable Phil Mendelson  
Chairman, Council of the District of Columbia

**FROM:** Jeffrey S. DeWitt  
Chief Financial Officer 

**DATE:** September 19, 2018

**SUBJECT:** Fiscal Impact Statement – Trafficking Survivors Relief Amendment Act of 2018

**REFERENCE:** Bill 22-329, Draft Committee Print as shared with the Office of Revenue Analysis on September 19, 2018

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**Conclusion**

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill.

**Background**

The bill creates an opportunity for victims of human trafficking to motion to the Superior Court (Court) to have convictions vacated and criminal records<sup>1</sup> expunged for eligible offenses<sup>2</sup> which resulted from the trafficking activity. The bill details how an individual must file a motion and what must be included in the motion. An individual can only file a motion after all criminal proceedings have completed and the individual serves any sentence that is subject to the motion.

The bill gives the prosecutor ninety days to file a motion in support of, or in opposition to, a motion to vacate or expunge if the Court does not dismiss or deny the motion.<sup>3</sup> Following the prosecutor's response, the Court may hold a hearing.<sup>4</sup> If the individual proves and the Court determines, by clear

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<sup>1</sup> Includes arrest and court proceeding records.

<sup>2</sup> Eligible offenses are all offenses except those defined as ineligible in the bill. Ineligible offenses include assault with the intention to kill or poison, first- and second-degree sexual abuse, child sexual abuse, murder, solicitation of murder, armed carjacking, acts of terrorism, and the manufacture, possession, use, or dissemination of a weapon of mass destruction.

<sup>3</sup> The Court may dismiss or deny the motion after an initial review if, in the Court's determination, the individual is not eligible for relief.

<sup>4</sup> The Court must hold a hearing within 90 days if the prosecutor opposes the motion.

The Honorable Phil Mendelson

FIS: Bill 22-329, "Trafficking Survivors Relief Amendment Act of 2018," Draft Committee Print as shared with the Office of Revenue Analysis on September 19, 2018

and convincing evidence, that the individual was a victim of human trafficking and that such trafficking was the direct cause of the individual's arrest or conviction for an eligible offense, then the Court may grant the motion to vacate or expunge. If the Court denies a motion to vacate or expunge, the Court must state the reasons for denial or offer the individual a reasonable period of time to correct any deficiencies and refile the motion.

The bill requires the relevant government entities, upon the granting of an order to vacate a conviction or expunge criminal records, one year to certify to the Court and notify the affected individual that all references to the individual have been removed from all government records related to the conviction or arrest for the eligible offense. In lieu of a request to expunge criminal records, an individual whose motion was successful may petition the Court to seal his or her criminal records. All Court decisions are considered final regarding an opportunity to appeal.

An individual can avail themselves of the bill's opportunity to vacate or expunge criminal records for any arrest or conviction that occurs before, on, or after the effective date of the bill.

#### **Financial Plan Impact**

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. The bulk of the activity and costs will be borne by the D.C. Superior Court which is federally funded. Any District costs related to the expungement or sealing of records, certification that those activities have been completed, and notification to the individuals who filed the motions can be absorbed within existing District resources.

## ATTACHMENT F



**OFFICE OF THE GENERAL COUNSEL**

Council of the District of Columbia  
1350 Pennsylvania Avenue NW, Suite 4  
Washington, DC 20004  
(202) 724-8026

**MEMORANDUM**

**TO:** Councilmember Charles Allen

**FROM:** John Hoellen, Deputy General Counsel *JH*

**DATE:** September 19, 2018

**RE:** Legal Sufficiency Determination for Bill 22-329, the  
Trafficking Survivors Relief Amendment Act of  
2018

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The measure is legally and technically sufficient for Council consideration.

The bill would allow:

- A person convicted of an eligible offense to apply by motion to the Superior Court of the District of Columbia to vacate the judgment of conviction and expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offense if the conduct of the person that resulted in the conviction was a direct result of the person having been a victim of trafficking; and
- A person arrested for, or charged with, any offense, but who was not prosecuted, or whose prosecution was terminated without conviction, to apply by motion to the Superior Court of the District of Columbia to expunge all records identifying the movant as having been arrested or prosecuted for the offense if the conduct of the person that resulted in the arrest or prosecution was a direct result of the person having been a victim of trafficking.<sup>1</sup>

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<sup>1</sup> A person may file a motion under the bill for an arrest, prosecution, or conviction that occurred before, on, or after the effective date of the bill.

Under the bill, the Court may hold a hearing on any motion, but must hold a hearing on a motion that is opposed by the prosecutor.

The bill provides that the burden of proof shall be on the movant to prove his or her case by clear and convincing evidence.

If the Court grants a motion under the bill, the Court must enter an order to expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offense. In addition, if the movant was convicted of an eligible offense, the Court must vacate the conviction and dismiss the relevant count with prejudice.

At any time before the Court grants a motion under the bill, a movant may request that, if the movant's motion is granted, the order granting the motion, in lieu of requiring the expungement of all records identifying the movant as having been arrested, prosecuted, or convicted of the offense, require that all records identifying the movant as having been arrested, prosecuted, or convicted of the offense be sealed. Such sealed records would only be available:

- By Court order upon a showing of compelling need; and
- Upon request by the movant, to the extent that such records would have been available to the movant before the records were sealed.

In such cases, the movant may, at any time after the Court grants the motion, request that the Court amend the order requiring that all records identifying the movant as having been arrested, prosecuted, or convicted of the offense be sealed, to instead require the expungement from all records identifying the movant as having been arrested, prosecuted, or convicted of the offense.

The effect of relief pursuant to the bill shall be to restore the movant, in the contemplation of the law, to the status he or she occupied before being arrested, prosecuted, or convicted.

An order dismissing, granting, or denying a motion filed under the bill shall be a final order for purposes of appeal.

I am available if you have any questions.

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## ATTACHMENT G

**Comparative Committee Print  
B22-0329  
Committee on the Judiciary & Public Safety  
September 20, 2018**

**Section 2**

**§ 22–1831. Definitions.**

For the purposes of this chapter, the term:

(1) “Abuse or threatened abuse of law or legal process” means the use or threatened use of law or legal process, whether administrative, civil, or criminal, in any manner or for any purpose for which the law was not designed, to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) “Business” means any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, holding company, joint stock, trust, and any legal entity through which business is conducted.

(3) “Coercion” means any one of, or a combination of, the following:

(A) Force, threats of force, physical restraint, or threats of physical restraint;  
(B) Serious harm or threats of serious harm;  
(C) The abuse or threatened abuse of law or legal process;  
(D) Fraud or deception;  
(E) Any scheme, plan, or pattern intended to cause a person to believe that if that person did not perform labor or services, that person or another person would suffer serious harm or physical restraint;

(F) Facilitating or controlling a person’s access to an addictive or controlled substance or restricting a person’s access to prescription medication; or

(G) Knowingly participating in conduct with the intent to cause a person to believe that he or she is the property of a person or business and that would cause a reasonable person in that person’s circumstances to believe that he or she is the property of a person or business.

(4) “Commercial sex act” means any sexual act or sexual contact on account of which or for which anything of value is given to, promised to, or received by any person. The term “commercial sex act” includes a violation of § 22-2701, § 22-2704, §§ 22-2705 to 22-2712, §§ 22-2713 to 22-2720, and § 22-2722.

(5) “Debt bondage” means the status or condition of a person who provides labor, services, or commercial sex acts, for a real or alleged debt, where:

(A) The value of the labor, services, or commercial sex acts, as reasonably assessed, is not applied toward the liquidation of the debt;

(B) The length and nature of the labor, services, or commercial sex acts are not respectively limited and defined; or

(C) The amount of the debt does not reasonably reflect the value of the items or services for which the debt was incurred.



(5A) "Eligible offense" means any criminal offense under the District of Columbia Official Code, except an ineligible offense.

(5B) "Ineligible offense" means:

(A) Assault with intent to kill or poison, or to commit first degree sexual abuse, second degree sexual abuse, or child sexual abuse, under section 803 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-401) ("Section 803"); provided, that assault with intent to rob under Section 803 shall constitute an eligible offense.

(B) Sex trafficking of children under section 104;

(C) Murder in the first degree under section 798 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-2101);

(D) Murder in the first degree — Placing obstructions upon or displacement of railroads under section 799 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-2102);

(E) Murder in the second degree under section 800 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-2103);

(F) Murder of law enforcement officer under section 802a of An Act To establish a code of law for the District of Columbia, effective May 23, 1995 (D.C. Law 10-256; D.C. Official Code § 22-2106);

(G) Solicitation of murder under section 802b(a) of An Act To establish a code of law for the District of Columbia, effective April 24, 2007 (D.C. Law 16-306; D.C. Official Code § 22-2107(a));

(H) Armed carjacking under section 854(b)(1) of An Act To establish a code of law for the District of Columbia, effective May 8, 1993 (D.C. Law 9-270; D.C. Official Code 22-2803(b)(1));

(I) First degree sexual abuse under section 201 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3002);

(J) First degree child sexual abuse under section 207 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3008);

(K) First degree sexual abuse of a minor under section 208a of the Anti-Sexual Abuse Act of 1994, effective April 24, 2007 (D.C. Law 16-306; D.C. Official Code § 22-3009.01);

(L) First degree sexual abuse of a secondary education student under section 208c of the Anti-Sexual Abuse Act of 1994, effective October 23, 2010 (D.C. Law 18-239; D.C. Official Code § 22-3009.03);

(M) First degree sexual abuse of a ward, patient, client, or prisoner under section 212 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3013);

(N) First degree sexual abuse of a patient or client under section 214 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3015);

(O) An act of terrorism under section 103 of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3153);

(P) Provision of material support or resources for an act of terrorism under section 103(m) of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3153(m));

(Q) Solicitation of material support or resources to commit an act of terrorism under section 103(n) of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3153(n));

(R) Manufacture or possession of a weapon of mass destruction under section 104(a) of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3154(a));

(S) Attempt or conspiracy to manufacture or possess a weapon of mass destruction under section 104(b) of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3154(b));

(T) Use, dissemination, or detonation of a weapon of mass destruction under section 105(a) of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3155(a));

(U) Attempt or conspiracy to use, disseminate, or detonate a weapon of mass destruction under section 105(b) of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3155(b)); or

(V) Attempt or conspiracy to commit any of the offenses listed in this paragraph, except conspiracy to commit sex trafficking of children under section 104.

(6) "Labor" means work that has economic or financial value.

(7) "Serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue to perform labor, services, or commercial sex acts to avoid incurring that harm.

(8) "Services" means legal or illegal duties or work done for another, whether or not compensated.

(9) "Sexual act" shall have the same meaning as provided in § 22-3001(8).

(10) "Sexual contact" shall have the same meaning as provided in § 22-3001(9).

(11) "Venture" means any group of 2 or more individuals associated in fact, whether or not a legal entity.

(12) "Victim of trafficking" means:

(A) A person against whom the following offenses were committed:

(i) Forced labor under section 102;

(ii) Trafficking in labor or commercial sex acts under section 103;

or

(iii) Sex trafficking of children under section 104; or

(B) A person who has been subject to an act or practice described in section 103(9) or (10) of the Trafficking Victims Protection Act of 2000, approved October 28, 2000 (114 Stat. 1469; 22 U.S.C. § 7102(9) or (10)).

**Sec. 114. Motion to vacate conviction or expunge criminal records for victims of trafficking.**

(a) A person convicted of an eligible offense may apply by motion to the Superior Court for the District of Columbia to vacate the judgment of conviction and expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offense if the conduct of the person that resulted in the conviction was a direct result of the person having been a victim of trafficking.

(b) A person arrested but not prosecuted, or whose prosecution was terminated without conviction, for an eligible offense or an ineligible offense, may apply by motion to the Superior Court for the District of Columbia to expunge all records identifying the movant as having been arrested or prosecuted for the offense if the conduct of the person that resulted in the arrest or prosecution was a direct result of the person having been a victim of trafficking.

(c) A motion filed under this section shall:

(1) Be in writing;

(2) State the arrests, prosecutions, and convictions for which the movant seeks relief;

(3) State the grounds upon which eligibility for relief is based and facts in support of the movant's claim;

(4) Be accompanied by any appropriate exhibits, affidavits, and supporting documents; and

(5) Be served upon the prosecutor.

(d) A movant may file a motion under this section regardless of whether any other person, such as the person who made the movant a victim of trafficking, has been arrested, prosecuted, or convicted for an offense.

(e) A person may file a motion under this section only after:

(1) All criminal proceedings against the person related to the offenses that are the subject of the motion have completed; and

(2) The person completes any sentence of incarceration, commitment, probation, parole, or supervised release related to the offenses that are the subject of the motion.

(f) At the request of a movant or prosecutor, the Court may place any record or part of a proceeding related to a motion filed under this section under seal while the motion is pending.

(g) A person may file a motion under this section for an arrest, prosecution, or conviction that occurred before, on, or after the effective date of the Trafficking Survivors Relief Amendment Act of 2018, as approved by the Committee on the Judiciary and Public Safety on September 20, 2018 (Committee print of Bill 22-329).

**Sec. 115. Review by Court.**

(a)(1) If it plainly appears from the face of the motion, any accompanying exhibits, affidavits, and documents, and the record of any prior proceedings, that the movant is not eligible for relief or is not entitled to relief, the Court may dismiss or deny the motion.

(2) If the motion contains a curable deficiency, the Court shall provide the movant with reasonable time to cure the deficiency and refile the motion.

(b) If the motion is not dismissed or denied after initial review, the Court shall order the prosecutor to file a response to the motion. Within 90 days after the Court's order for a response, the prosecutor shall file a response indicating whether the prosecutor supports or opposes the motion.

(c) The Court may hold a hearing on any motion filed under section 114; provided, that if the prosecutor opposes a motion filed under section 114, the Court shall hold a hearing on the motion within 90 days after the filing of the opposition.

(d) The Court shall grant a motion filed under section 114(a), if the movant establishes, by clear and convincing evidence that:

(1) The movant was convicted of an eligible offense;

(2) The movant is a victim of trafficking; and

(3) The conduct by the movant resulting in the conviction was a direct result of the movant having been a victim of trafficking.

(e) The Court shall grant a motion filed under section 114(b), if the movant establishes, by clear and convincing evidence that:

(1) The movant was arrested but not prosecuted, or the prosecution was terminated without conviction, for an eligible offense or an ineligible offense;

(2) The movant is a victim of trafficking; and

(3) The conduct by the movant resulting in the arrest or prosecution was a direct result of the movant having been a victim of trafficking.

(f) There shall be a rebuttable presumption that a movant is a victim of trafficking if the movant includes in the motion a copy of an official record from a federal, state, tribal, or local proceeding finding that the movant was a victim of trafficking, including a Certification Letter or Eligibility Letter from the U.S. Department of Health and Human Services.

(g) The Court may grant a motion under this section based solely on an affidavit or sworn testimony of the movant.

#### **Sec. 116. Grants and denials of motion.**

(a) If the Court denies a motion filed under section 114, the Court shall state the reasons for denial in writing.

(b) If the Court grants a motion filed under section 114(a), the Court shall vacate the conviction, dismiss the relevant count with prejudice, and, except as provided in subsection (d) of this section, enter an order requiring the Court, the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court's order.

(c) If the Court grants a motion filed under section 114(b), the Court shall, except as provided in subsection (d) of this section, enter an order requiring the Court, the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court's order.

(d)(1) At any time before the Court grants a motion under subsection (b) or (c) of this section, a movant may file a request that, if the movant's motion is granted, the order granting the motion filed under section 114, in lieu of requiring the expungement of all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court's order, require the Court, the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to seal all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court's order.

(2) A movant who filed a request under paragraph (1) of this subsection, whose motion filed under section 114 was subsequently granted, may file a second request with the Court, requesting that the Court amend the order issued under paragraph (1) of this subsection, to instead require the expungement of all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court's order.

(3) Records sealed under this subsection shall be opened only on order of the Court upon a showing of compelling need; except, that upon request, the movant, or the authorized representative of the movant, shall be entitled to a copy of the sealed records to the extent that such records would have been available to the movant before relief under this subsection was granted. A request for access to sealed court records may be made ex parte.

(e) Within one year after the Court's grant of a motion under subsection (b) or (c) of this section, or, if the movant filed a request pursuant to subsection (d)(1) of this section, within one year after the filing of a request pursuant to subsection (d)(2) of this section, the Clerk of the Superior Court of the District of Columbia, the prosecutor, any relevant law enforcement agency, and any pretrial services, corrections, or community supervision agency shall certify to the Court that to the best of its knowledge and belief, all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court's order have been expunged from its records.

(f) In a case involving co-defendants in which the Court orders the movant's records expunged or sealed, the Court may order that only those records, or portions thereof, relating solely to the movant be expunged or sealed.

(g) In a case where a movant was arrested, prosecuted, or convicted of an offense other than the offense for which a Court orders the movant's records expunged or sealed, the Court may order that only those records, or portions thereof, relating solely to the offense that is the subject of the Court's order be expunged or sealed.

(h) The Court shall not order the redaction of the movant's name from any published opinion of the trial or appellate courts that refer to the movant.

(i) The effect of relief pursuant to this section shall be to restore the movant, in the contemplation of the law, to the status he or she occupied before being arrested, prosecuted, or convicted. No person as to whom such relief has been granted shall be held thereafter under any provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge his or her arrest, charge, trial, or conviction in response to any inquiry made of him or her for any purpose.

(j)(1) A copy of an order issued under this section and the certifications filed with the Court under subsection (e) of this section shall be provided to the movant or his or her counsel.

(2) Notwithstanding any provision of this section, the Court shall seal, but not expunge, an order issued under subsection (b) or (c) of this section or a certification filed with the Court under subsection (e) of this section.

(3) A movant may obtain a copy of an order issued under subsection (b) or (c) of this section or a certification filed with the Court under subsection (e) of this section at any time from the Clerk of the Court, upon proper identification, without a showing of need.

**Sec. 117. Appeals.**

An order dismissing, granting, or denying a motion filed under section 114 shall be a final order for purposes of appeal.

## ATTACHMENT H

1 Committee Print  
2 B22-0329  
3 Committee on the Judiciary and Public Safety  
4 September 20, 2018  
5  
6  
7

8 A BILL  
9

10 B22-0329  
11

12 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
13  
14  
15  
16

17 To amend the Prohibition Against Human Trafficking Amendment Act of 2010 to allow for the  
18 vacatur of convictions and expungement or sealing of criminal records for certain offenses  
19 when the conduct of the person was the direct result of the person having been a victim of  
20 trafficking.  
21

22 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
23 act may be cited as the “Trafficking Survivors Relief Amendment Act of 2018”.

24 Sec. 2. The Prohibition Against Human Trafficking Amendment Act of 2010, effective  
25 October 23, 2010 (D.C. Law 18-239; D.C. Official Code § 22-1831 *et seq.*), is amended as follows:

26 (a) Section 101 (D.C. Official Code § 22-1831) is amended as follows:

27 (1) New paragraphs (5A) and (5B) are added to read as follows:

28 “(5A) “Eligible offense” means any criminal offense under the District of Columbia  
29 Official Code, except an ineligible offense.

30 “(5B) “Ineligible offense” means:

31 “(A) Assault with intent to kill or poison, or to commit first degree sexual  
32 abuse, second degree sexual abuse, or child sexual abuse, under section 803 of An Act To establish  
33 a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official



Code § 22-401) (“Section 803”); provided, that assault with intent to rob under Section 803 shall constitute an eligible offense.

“(B) Sex trafficking of children under section 104;

“(C) Murder in the first degree under section 798 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-2101);

“(D) Murder in the first degree — Placing obstructions upon or displacement of railroads under section 799 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-2102);

“(E) Murder in the second degree under section 800 of An Act To establish a code of law for the District of Columbia, approved March 3, 1901 (31 Stat. 1321; D.C. Official Code § 22-2103);

“(F) Murder of law enforcement officer under section 802a of An Act To establish a code of law for the District of Columbia, effective May 23, 1995 (D.C. Law 10-256; D.C. Official Code § 22-2106);

“(G) Solicitation of murder under section 802b(a) of An Act To establish a code of law for the District of Columbia, effective April 24, 2007 (D.C. Law 16-306; D.C. Official Code § 22-2107(a));

“(H) Armed carjacking under section 854(b)(1) of An Act To establish a code of law for the District of Columbia, effective May 8, 1993 (D.C. Law 9-270; D.C. Official Code 22-2803(b)(1));

“(I) First degree sexual abuse under section 201 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3002);

57                   “(J) First degree child sexual abuse under section 207 of the Anti-Sexual  
58 Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code § 22-3008);

59                   “(K) First degree sexual abuse of a minor under section 208a of the Anti-  
60 Sexual Abuse Act of 1994, effective April 24, 2007 (D.C. Law 16-306; D.C. Official Code § 22-  
61 3009.01);

62                   “(L) First degree sexual abuse of a secondary education student under  
63 section 208c of the Anti-Sexual Abuse Act of 1994, effective October 23, 2010 (D.C. Law 18-239;  
64 D.C. Official Code § 22-3009.03);

65                   “(M) First degree sexual abuse of a ward, patient, client, or prisoner under  
66 section 212 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257;  
67 D.C. Official Code § 22-3013);

68                   “(N) First degree sexual abuse of a patient or client under section 214 of the  
69 Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10-257; D.C. Official Code §  
70 22-3015);

71                   “(O) An act of terrorism under section 103 of the Omnibus Anti-Terrorism  
72 Act of 2002, effective October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3153);

73                   “(P) Provision of material support or resources for an act of terrorism under  
74 section 103(m) of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law  
75 14-194; D.C. Official Code § 22-3153(m));

76                   “(Q) Solicitation of material support or resources to commit an act of  
77 terrorism under section 103(n) of the Omnibus Anti-Terrorism Act of 2002, effective October 17,  
78 2002 (D.C. Law 14-194; D.C. Official Code § 22-3153(n));

79                   “(R) Manufacture or possession of a weapon of mass destruction under  
80 section 104(a) of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C. Law  
81 14-194; D.C. Official Code § 22-3154(a));

82                   “(S) Attempt or conspiracy to manufacture or possess a weapon of mass  
83 destruction under section 104(b) of the Omnibus Anti-Terrorism Act of 2002, effective October  
84 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3154(b));

85                   “(T) Use, dissemination, or detonation of a weapon of mass destruction  
86 under section 105(a) of the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002 (D.C.  
87 Law 14-194; D.C. Official Code § 22-3155(a));

88                   “(U) Attempt or conspiracy to use, disseminate, or detonate a weapon of  
89 mass destruction under section 105(b) of the Omnibus Anti-Terrorism Act of 2002, effective  
90 October 17, 2002 (D.C. Law 14-194; D.C. Official Code § 22-3155(b)); or

91                   “(V) Attempt or conspiracy to commit any of the offenses listed in this  
92 paragraph, except conspiracy to commit sex trafficking of children under section 104.”.

93                   (2) A new paragraph (12) is added to read as follows:

94                   “(12) “Victim of trafficking” means:

95                   “(A) A person against whom the following offenses were committed:

96                   “(i) Forced labor under section 102;

97                   “(ii) Trafficking in labor or commercial sex acts under section 103;

98 or

99                   “(iii) Sex trafficking of children under section 104; or

“(B) A person who has been subject to an act or practice described in section 103(9) or (10) of the Trafficking Victims Protection Act of 2000, approved October 28, 2000 (114 Stat. 1469; 22 U.S.C. § 7102(9) or (10)).”.

(b) New sections 114, 115, 116, and 117 are added to read as follows:

“Sec. 114. Motion to vacate conviction or expunge criminal records for victims of trafficking.

“(a) A person convicted of an eligible offense may apply by motion to the Superior Court for the District of Columbia to vacate the judgment of conviction and expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offense if the conduct of the person that resulted in the conviction was a direct result of the person having been a victim of trafficking.

“(b) A person arrested but not prosecuted, or whose prosecution was terminated without conviction, for an eligible offense or an ineligible offense, may apply by motion to the Superior Court for the District of Columbia to expunge all records identifying the movant as having been arrested or prosecuted for the offense if the conduct of the person that resulted in the arrest or prosecution was a direct result of the person having been a victim of trafficking.

“(c) A motion filed under this section shall:

“(1) Be in writing;

“(2) State the arrests, prosecutions, and convictions for which the movant seeks relief;

“(3) State the grounds upon which eligibility for relief is based and facts in support of the movant’s claim;

122 “(4) Be accompanied by any appropriate exhibits, affidavits, and supporting  
123 documents; and

124 “(5) Be served upon the prosecutor.

125 “(d) A movant may file a motion under this section regardless of whether any other person,  
126 such as the person who made the movant a victim of trafficking, has been arrested, prosecuted, or  
127 convicted for an offense.

128 “(e) A person may file a motion under this section only after:

129 “(1) All criminal proceedings against the person related to the offenses that are the  
130 subject of the motion have completed; and

131 “(2) The person completes any sentence of incarceration, commitment, probation,  
132 parole, or supervised release related to the offenses that are the subject of the motion.

133 “(f) At the request of a movant or prosecutor, the Court may place any record or part of a  
134 proceeding related to a motion filed under this section under seal while the motion is pending.

135 “(g) A person may file a motion under this section for an arrest, prosecution, or conviction  
136 that occurred before, on, or after the effective date of the Trafficking Survivors Relief Amendment  
137 Act of 2018, as approved by the Committee on the Judiciary and Public Safety on September 20,  
138 2018 (Committee print of Bill 22-329).

139 “Sec. 115. Review by Court.

140 “(a)(1) If it plainly appears from the face of the motion, any accompanying exhibits,  
141 affidavits, and documents, and the record of any prior proceedings, that the movant is not eligible  
142 for relief or is not entitled to relief, the Court may dismiss or deny the motion.

143 “(2) If the motion contains a curable deficiency, the Court shall provide the movant  
144 with reasonable time to cure the deficiency and refile the motion.

145           “(b) If the motion is not dismissed or denied after initial review, the Court shall order the  
146 prosecutor to file a response to the motion. Within 90 days after the Court’s order for a response,  
147 the prosecutor shall file a response indicating whether the prosecutor supports or opposes the  
148 motion.

149           “(c) The Court may hold a hearing on any motion filed under section 114; provided, that if  
150 the prosecutor opposes a motion filed under section 114, the Court shall hold a hearing on the  
151 motion within 90 days after the filing of the opposition.

152           “(d) The Court shall grant a motion filed under section 114(a), if the movant establishes,  
153 by clear and convincing evidence that:

154                   “(1) The movant was convicted of an eligible offense;

155                   “(2) The movant is a victim of trafficking; and

156                   “(3) The conduct by the movant resulting in the conviction was a direct result of  
157 the movant having been a victim of trafficking.

158           “(e) The Court shall grant a motion filed under section 114(b), if the movant establishes,  
159 by clear and convincing evidence that:

160                   “(1) The movant was arrested but not prosecuted, or the prosecution was terminated  
161 without conviction, for an eligible offense or an ineligible offense;

162                   “(2) The movant is a victim of trafficking; and

163                   “(3) The conduct by the movant resulting in the arrest or prosecution was a direct  
164 result of the movant having been a victim of trafficking.

165           “(f) There shall be a rebuttable presumption that a movant is a victim of trafficking if the  
166 movant includes in the motion a copy of an official record from a federal, state, tribal, or local

proceeding finding that the movant was a victim of trafficking, including a Certification Letter or Eligibility Letter from the U.S. Department of Health and Human Services.

“(g) The Court may grant a motion under this section based solely on an affidavit or sworn testimony of the movant.

“Sec. 116. Grants and denials of motion.

“(a) If the Court denies a motion filed under section 114, the Court shall state the reasons for denial in writing.

“(b) If the Court grants a motion filed under section 114(a), the Court shall vacate the conviction, dismiss the relevant count with prejudice, and, except as provided in subsection (d) of this section, enter an order requiring the Court, the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court’s order.

“(c) If the Court grants a motion filed under section 114(b), the Court shall, except as provided in subsection (d) of this section, enter an order requiring the Court, the prosecutor, any relevant law enforcement agency, and any pretrial, corrections, or community supervision agency to expunge all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court’s order.

“(d)(1) At any time before the Court grants a motion under subsection (b) or (c) of this section, a movant may file a request that, if the movant’s motion is granted, the order granting the motion filed under section 114, in lieu of requiring the expungement of all records identifying the movant as having been arrested, prosecuted, or convicted of the offenses specified in the Court’s order, require the Court, the prosecutor, any relevant law enforcement agency, and any pretrial,

190 corrections, or community supervision agency to seal all records identifying the movant as having  
191 been arrested, prosecuted, or convicted of the offenses specified in the Court's order.

192           “(2) A movant who filed a request under paragraph (1) of this subsection, whose  
193 motion filed under section 114 was subsequently granted, may file a second request with the Court,  
194 requesting that the Court amend the order issued under paragraph (1) of this subsection, to instead  
195 require the expungement of all records identifying the movant as having been arrested, prosecuted,  
196 or convicted of the offenses specified in the Court's order.

197           “(3) Records sealed under this subsection shall be opened only on order of the Court  
198 upon a showing of compelling need; except, that upon request, the movant, or the authorized  
199 representative of the movant, shall be entitled to a copy of the sealed records to the extent that such  
200 records would have been available to the movant before relief under this subsection was granted.

201 A request for access to sealed court records may be made ex parte.

202           “(e) Within one year after the Court's grant of a motion under subsection (b) or (c) of this  
203 section, or, if the movant filed a request pursuant to subsection (d)(1) of this section, within one  
204 year after the filing of a request pursuant to subsection (d)(2) of this section, the Clerk of the  
205 Superior Court of the District of Columbia, the prosecutor, any relevant law enforcement agency,  
206 and any pretrial services, corrections, or community supervision agency shall certify to the Court  
207 that to the best of its knowledge and belief, all records identifying the movant as having been  
208 arrested, prosecuted, or convicted of the offenses specified in the Court's order have been  
209 expunged from its records.

210           “(f) In a case involving co-defendants in which the Court orders the movant's records  
211 expunged or sealed, the Court may order that only those records, or portions thereof, relating solely  
212 to the movant be expunged or sealed.



213 “(g) In a case where a movant was arrested, prosecuted, or convicted of an offense other  
214 than the offense for which a Court orders the movant’s records expunged or sealed, the Court may  
215 order that only those records, or portions thereof, relating solely to the offense that is the subject  
216 of the Court’s order be expunged or sealed.

217 “(h) The Court shall not order the redaction of the movant’s name from any published  
218 opinion of the trial or appellate courts that refer to the movant.

219 “(i) The effect of relief pursuant to this section shall be to restore the movant, in the  
220 contemplation of the law, to the status he or she occupied before being arrested, prosecuted, or  
221 convicted. No person as to whom such relief has been granted shall be held thereafter under any  
222 provision of law to be guilty of perjury or otherwise giving a false statement by reason of failure  
223 to recite or acknowledge his or her arrest, charge, trial, or conviction in response to any inquiry  
224 made of him or her for any purpose.

225 “(j)(1) A copy of an order issued under this section and the certifications filed with the  
226 Court under subsection (e) of this section shall be provided to the movant or his or her counsel.

227 (2) Notwithstanding any provision of this section, the Court shall seal, but not  
228 expunge, an order issued under subsection (b) or (c) of this section or a certification filed with the  
229 Court under subsection (e) of this section.

230 (3) A movant may obtain a copy of an order issued under subsection (b) or (c) of  
231 this section or a certification filed with the Court under subsection (e) of this section at any time  
232 from the Clerk of the Court, upon proper identification, without a showing of need.

233 “Sec. 117. Appeals.

234 “An order dismissing, granting, or denying a motion filed under section 114 shall be a final  
235 order for purposes of appeal.”.

236           Sec. 3. Fiscal impact statement.

237           The Council adopts the fiscal impact statement in the committee report as the fiscal impact  
238 statement required by section 4a of the General Legislative Procedures Act of 1975, approved  
239 October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

240           Sec. 4. Effective date.

241           This act shall take effect following approval by the Mayor (or in the event of veto by the  
242 Mayor, action by the Council to override the veto), a 60-day period of congressional review as  
243 provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24,  
244 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(2)), and publication in the District of  
245 Columbia Register.